



TOOLKIT FOR SAFE EXAM ACCESS

Making Sexual Assault
Forensic-Medical Exams
Available to All Victims

a product of the
Kentucky Sexual Assault Response Team
Advisory Committee

July 2018

Contents

1

Introduction

2

Overview:

SAFE Exam Toolkit Compliance Project

2-7

Frequently Asked Questions:
SAFE Exams Access Project

8-10

Sample Protocol for Handling of Samples
Collected During Sexual Assault Medical-
Forensic Examinations (SAFE Exams)
NOT Reported to Law Enforcement

11

Patient Consent For
Sexual Assault Forensic-Medical Exam

12

Consent Form for Sexual Assault Forensic-
Medical Examinations With or Without
Reporting to Law Enforcement and
Consent for Follow-Up Contact

13

What to do with a Forensic Evidence Kit
after Collection

14

Sample Log for Tracking
SAFE Exam Samples

15-16

Kentucky General Mandatory Reporting

This document provides guidance for medical professionals who are working with individuals who have experienced sexual assault and inquire about a SAFE Exam. This toolkit reviews federal and Kentucky law as well as suggested best practices. In addition, law enforcement, advocates, prosecutors, and others can benefit from the content.

This guide is not intended to be interpreted as legal counsel; hospitals should seek independent legal counsel.

THE SEXUAL ASSAULT RESPONSE TEAM ADVISORY COMMITTEE

The Sexual Assault Response Team Advisory Committee operates pursuant to KRS 403.707 with membership representing the following:

Kentucky State Police, *Co-Chair*
Kentucky Association of Sexual Assault Programs, *Co-Chair*
Kentucky Board of Nursing
Kentucky Nurses Association
Kentucky Hospital Association
Kentucky Association of Children's Advocacy Centers
Kentucky State Police Forensic Laboratories
CHFS, Family Violence Prevention Branch
Office of Victims Advocacy, Office of the Attorney General
Sexual Assault Nurse Examiner, Physician, Prosecuting Attorney,
and SART Team Member

INTRODUCTION

Kentucky's Sexual Assault Response Team Advisory Committee (SART AC) is a multi-disciplinary collaboration of community partners, co-chaired by the Kentucky Association of Sexual Assault Programs and the Kentucky State Police, tasked with a number of responsibilities under KRS 403.707. See <http://www.lrc.ky.gov/statutes/statute.aspx?id=44850>.

The SART AC serves in an advisory capacity to the Board of Nursing regarding the Sexual Assault Nurse Examiner program and to the Kentucky Justice and Public Safety Cabinet in the development of the statewide sexual assault protocols and the development of a model protocol for the operation of sexual assault response teams.

In addition to policy and protocol development, the SART AC is responsible for providing the regional rape crisis centers with assistance in establishing local and regional sexual assault response teams; this includes training and other resources for health care professionals, law enforcement professionals, and rape crisis program victims advocates.

SAFE EXAM OVERVIEW

Purpose of SAFE exam

- To provide appropriate, quality, victim centered, trauma informed care to all victims who disclose sexual violence in a hospital or other exam facility.
- To increase evidence available for use in prosecutions by allowing victims who may be unsure of whether or not they wish to report to law enforcement immediately to have samples collected that may be used as evidence, in case of or when a report is filed.

Challenges identified

- **Education:** Many health care professionals have little training regarding the care of victims of sexual violence. Doctors, nurses and other medical providers may not have a clear understanding of patient centered, trauma informed care and other best practices regarding the response to this patient population. Often health professionals mistakenly believe that they are required to report all sex crimes to law enforcement. Continued training is needed to ensure a victim centered, trauma informed approach that provides quality care and protects the rights of victims to make decisions regarding evidence collection and reporting.
- **Storage:** A few communities still do not have systems in place to ensure that samples are securely stored, if the victim chooses not to report immediately. Appropriate systems must be developed to ensure that chain of custody is protected so that samples may be used if victim decides to file delayed report.

FREQUENTLY ASKED QUESTIONS

In General

Q: What is a SAFE Exam?

A: A Sexual Assault Forensic-Medical Examination (SAFE Exam) is an examination performed on a victim of a sex crime where medical needs are addressed and forensic samples are gathered. SAFE Exams are provided by doctors, Sexual Assault Forensic Nurse Examiners (SANEs), or other qualified health care professionals, at hospitals and specialized clinics throughout Kentucky, when a victim requests one.

Q: When should I contact a rape crisis center advocate?

A: Kentucky law requires that providers notify the rape crisis center 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.

Q: Does contacting the rape crisis center advocate violate HIPAA?

A: 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). For information see 45 CFR 164.502(a)(1).

Q: What resources are available to help ensure SAFE Exam compliance?

A: The Sexual Assault Response Team (SART) Advisory Committee has developed a statewide plan to ensure access to SAFE exams throughout the Commonwealth. Resources include; Compliance Toolkit and Training Materials, as well as technical assistance provided by the Kentucky Association of Sexual Assault Program staff and local programs.

Q: Where can I find key Kentucky laws regarding the response to and care of victims of sexual violence who seek a SAFE Exam?

A: KRS 216b.400 <http://www.lrc.ky.gov/Statutes/statute.aspx?id=47066> and 502 KAR 12:010 <http://www.lrc.ky.gov/kar/502/012/010.pdf>. (Note: As of June 2018, 502 KAR 12:010 is still in the process of being updated to reflect changes in law: 1. Storage of non reported kits extended from 90 days to 1 year in 2016 and 2. spouse abuse reporting is no longer required as of 2017.)

Q: Who provides Sexual Assault Examination Kits?

A: Kentucky State Police provide the kits at no charge. Hospitals and other exam facilities should obtain KSP Kits in advance, to ensure availability when needed. Contact your local State Police Post, other local law enforcement agency, or the Kentucky State Police Central Crime Laboratory in Frankfort at 502-564-5230.

Q: Can I refuse to conduct a SAFE Exam?

A: Not if you are a hospital that provides emergency services. 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. Emergency Medical Treatment and Active Labor Act, or EMTALA, specifically permits such transfers, so long as a medical screening examination has been conducted to ensure that the patient/victim is not experiencing an emergency medical condition. See 42 USC 1395dd. If the patient prefers to be treated on-sight, the hospital has a legal duty to provide the exam.

Victim Choice in Reporting to Law Enforcement

Q: What if the victim does not want to report to law enforcement?

A: 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.

Q: Must the sex crime be reported to law enforcement in order for an exam to be provided?

A: No. Both federal and state laws require access to SAFE Exams regardless of whether the victim reports to police.

Q: How does this impact mandatory reporting?

A: It does not change mandatory reporting requirements. However, Kentucky law does not require reporting all rapes or sexual assaults to law enforcement. Instead, Kentucky only requires reporting to law enforcement under child abuse, dependency, or neglect. This report may also be made to the Cabinet for Health and Family Services or to the local prosecutor's office. See KRS 600, 620.

Q: How can health care providers comply with both HIPAA and mandatory reporting laws?

A: 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 of 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.

Q: When must I contact law enforcement?

A: Always contact law enforcement upon patient request. Hospitals are required to notify police within 24 hours of a victim's request under KRS 216B.400(10)(b). Best practice is to provide a consent form to the patient. Again, there is no other required time to contact law enforcement except as an option under child abuse, dependency, or neglect.

Q: What is the federal law regarding SAFE exams?

A: The Violence Against Women and Department of Justice Reauthorization Act of 2005 ("VAWA 2005"), 42 U.S.C. § 3796gg-4(d), provides 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, reimbursed for charges incurred on account of such an exam, or both" (the "VAWA 2005 forensic examination requirement"). Under this provision a state must ensure victims have access to an exam free of charge or with full reimbursement, even if the victim chooses not to report the crime to the police or otherwise engage with the criminal justice system or law enforcement authorities.

Q: What is the effect of this law and policy?

A: VAWA established the requirement that victims receive medical and forensic exams with the choice of whether or not to report to police. Kentucky state law is the same. This allows victims time to decide whether to report to law enforcement. A sexual assault is a traumatic event. Some victims are unable to decide whether to report or otherwise engage with law enforcement in the immediate aftermath of sexual assault. Because forensic evidence can be lost as time progresses, these changes will allow victims to have the evidence collected as soon as possible without deciding to initiate a report. This provision ensures victims receive timely medical treatment.

What to do with samples if a victim does not report to law enforcement?

Q: What should be done with samples collected when there is no contemporaneous report to law enforcement?

A: Samples should be stored in accordance with 502 KAR 12:010; <http://www.lrc.ky.gov/kar/502/012/010.pdf>. They should be stored for at least one year under KRS 216B.400(10)(c)(3).

Q: Who can store samples in cases not reported to law enforcement?

A: The examination facility may either store samples or transfer samples to a designated storage facility.

Q: Can samples be destroyed after a period of time?

A: Hospitals may destroy non-reported samples after one year. By law, the victim should be informed of the storage timeline and destruction at the time of examination.

Victim consent for SAFE Exam

Q: Who can give or withhold consent for a sexual assault examination?

A: With only one exception, any person can give consent for a sexual assault examination, even a minor. Pursuant to KRS 216B.400(7), a parent may not prevent or force the performance of an examination on a minor.

Note: Only adults who have been determined by a court to be "legally disabled" AND for whom a "guardian" has been appointed to make medical decisions are legally incapable of giving consent for sexual assault exams. In such cases, the guardian must give consent, except in emergency situations. 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.

By law, sexual assault exams should only be conducted with the consent of the victim. The victim must be informed that they may withdraw consent at any time. See 502 KAR 12:010. 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.

Q: Who decides if a sexual assault examination is performed?

A: 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. Neither law enforcement officials, prosecutors, nor any other officials are authorized to oppose a victim's decision.

Payment for SAFE Exams

Q: Who pays for SAFE exams?

A: The Kentucky Claims Commission has a process for providers to submit a request for payment for exams. For more information, see <http://cvcb.ky.gov/SAEP/Pages/default.aspx>
All victims have a right to receive a SAFE Exam free of cost.

Pursuant to KRS 216B.400(9), no charge shall be made to the victim for these examinations. However, 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 The Kentucky Claims Commission from the general Crime Victims Compensation Fund. It generally takes several months for claims to be processed and many are denied. Therefore, health care providers must "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.

Note: Health care providers are NOT required to notify law enforcement to ensure payment of exam related costs from the Sexual Assault Examination Program operated by The Kentucky Claims Commission. For additional information or to review the forms, please visit their website, <http://cvcb.ky.gov/Pages/default.aspx>. However, if the victim chooses not to report to law enforcement, it may affect her/his ability to access funds for additional expenses. The Sexual Assault Examination Program only pays for costs related to the basic sexual assault examination. The Kentucky Claims Commission also administers the Crime Victims Compensation Fund (a separate fund with vastly different rules), which may be available to assist victims with additional costs, such as x-rays, ambulance fees, and lost wages. However, in order to qualify for these funds, the crime must be reported to law enforcement officials within 48 hours or provide a justifiable reason for delay, the victim must cooperate with law enforcement officials, the victim must make a separate application for assistance, and a separate investigation must be conducted to determine whether other eligibility criteria are met.

Q: Where can I find the claim forms?

A: Forms for payment of services related to a sexual assault exam, including HIV post –exposure treatment, can be accessed at the KCC website at <http://cvcb.ky.gov/Pages/default.aspx> and selecting/clicking on the desired form.

Note: Victims are not responsible for filing a claim with the KCC SAFE exam program and should not receive medical statements from the facility that performed the sexual assault examination. The victim may, however, be charged for expenses not related to the examination process (e.g., ambulance expenses, follow-up care, hospitalizations, surgical procedures). In such cases, the victim may file a separate claim with the KCC for these expenses.

Q: What must be submitted in order for a SAFE exam claim to be paid?

1. Itemized billing.
2. Original and completed Sexual Assault Examination Certificate signed by both the patient and the examiner.
3. Kentucky Claims Commission Evidentiary Form
4. For additional information refer to; <http://cvcb.ky.gov/Pages/default.aspx>.

Q: Is there a time limit for filing?

A: No. However, the KCC assumed the responsibility of the Rape Victims Assistance Program (now referred to as the Sexual Assault Examination Program) from the Attorney General's Office in 2003. The board will not accept any claims that occurred before 2003.

Q: Can I bill other insurance?

A: Yes, facilities must first bill any existing public or private medical insurance providers. SAFE exam providers should submit the required payment forms to the KCC after first billing any existing private or public medical insurance providers. Any remaining uncovered expenses are paid by the KCC directly to SAFE exam facilities.

KRS 216B.400(9) prohibits the hospital, the sexual assault examination facility, the physician, the pharmacist, the health department, the sexual assault nurse examiner, other qualified medical professional, the victim's insurance carrier, or the Commonwealth from billing the victim.

Note: Terms of agreement are different with children advocacy centers. Children advocacy centers should contact the sexual assault examination program coordinator for clarification if needed. If a balance remains after receipt of payment or if the claim is denied from the Sexual Assault Examination Program, the balance can not be charged to the victim and must be written off by the medical provider. KRS 216B.400(9)

Q: Will the Sexual Assault Examination Program pay for an offender exam?

A: No. This program does not pay for any expenses of the alleged offender.

Q: What if a victim receives a bill from a provider for a sexual assault exam?

They should not ignore this bill. They may contact the hospital billing office directly or the Program Coordinator of the Sexual Assault Examination Program for the KCC. Please give the date of service, account number, date of birth, social security number and provider's name and phone number.

Anything else?

Q: What is a SANE-ready hospital?

A: SANE-ready is a certified designation from the Cabinet for Health and Family Services that a hospital has 24 hour SANE coverage. This is an annual certification.

Q: Does the duty to provide educational materials to victims of domestic and dating violence and abuse apply to medical professionals?

A: Yes. This duty may apply when you are working with victims of sexual assault if their perpetrator meets the relationship requirement listed below. This duty includes physicians, medical residents, medical interns, osteopathic physicians, coroners, medical examiners, chiropractors, dentists, optometrists, nurses, emergency medical technicians, paramedics, and others. See KRS 209A.

It requires that when you have a reasonable cause to believe that a victim with whom you had a professional interaction has experienced domestic violence and abuse or dating violence and abuse, that you provide them with educational materials related to domestic or dating violence and abuse, referral information for accessing regional domestic violence programs or rape crisis centers, and information about how to access protective orders. Materials may be accessed online or provided in print by contacting your local domestic violence center or the Kentucky Coalition Against Domestic Violence at (502) 209-5382 or kcadv.org.

Domestic and dating violence and abuse occurs when:

- A spouse or former spouse, a person with whom they share a child in common, live or have lived together as a couple, or are or have been in a dating relationship
- Inflicts a physical injury, serious physical injury, stalking, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault upon the other

Note: This duty to provide information may become a duty to report to law enforcement if the victim requests that you contact police AND if death of victim is related to the abuse.

The purpose of this section is to establish guidelines for collection, packaging, storage, or transfer, and potential destruction of physical samples collected during a SAFE Exam.

RATIONALE:

In the aftermath of sexual assault, many victims seek medical treatment, but are unsure whether to report to law enforcement. Unfortunately, forensic-medical samples must be collected as soon as possible, or else potential evidence is lost. Thus, it is frequently recommended that all victims have SAFE Exams, so that samples are available if needed.

In 2005, federal law was enacted to encourage more victims to have samples collected for potential use in prosecution. To comply with the Violence Against Women Act (VAWA), states must provide SAFE Exams without requiring patient/victim engagement with law enforcement. Kentucky law followed suit by allowing victim choice in reporting under KRS 216B.400.

Hospitals and other sexual assault examination facilities must provide SAFE Exams to victims who request such exams, regardless of whether the victim chooses to report the incident to law enforcement at the same time. The victim/patient must be given a choice of whether or not law enforcement will be notified and whether to release any information to law enforcement officials unless the facts fall under mandatory reporting in cases involving abuse, neglect, or exploitation of a child (KRS 600 and 620). In a child abuse reporting case, it must be reported to one of the following: law enforcement, the Cabinet for Health and Family Services, or the prosecutor's office. Compliance with mandatory reporting laws is permitted by the Health Insurance Portability and Accountability Act (HIPAA). However, hospitals and other facilities who report all cases to law enforcement without the victim's consent may be held liable for violation of the HIPAA, as Kentucky law does not require reporting all sex crimes.

Since the ultimate goal is to improve the reporting options for victims, proper packaging and storage of samples collected in these exams is critical. This protocol sets standards designed to ensure that: (1) the patient's right to control reporting and release of information/samples to law enforcement, (2) proper maintenance of the chain of custody so that evidence will be admissible in cases where a delayed report is made, and (3) appropriate destruction of samples, if the crime is not reported to law enforcement within the period required for storage.

PROCEDURE:

Section 1 - Determination of Storage Location

1. The facility at which samples are collected, hereinafter referred to as the examination facility, is responsible for ensuring that samples are securely stored for at least one year. The facility may either choose to provide storage or to transfer samples to a designated storage facility, as defined in 502 KAR 12:010.
2. If the examination facility elects to store samples, internal systems shall be developed to ensure that samples are stored, tracked, and, if appropriate, destroyed as outlined in Sections 3 -5 of these guidelines.
3. If the examination facility elects to transfer samples to a designated storage facility, the examination facility should enter into a contract, memorandum of agreement, and/or business associates agreement with the designated storage facility.

Section 2 - Collection and Packaging

1. All samples shall be collected as set forth in KRS 216B.400 and 502 KAR 12:010, and pursuant to instructions provided in the Sexual Assault Evidence Collection Kit.

2. If the victim chooses to report to law enforcement, obtain the victim/patient's informed consent to release information (including samples) to the law enforcement agency of jurisdiction.
3. If the victim chooses not to report to law enforcement, obtain the victim/patient's informed consent for treatment and authorization for follow-up contact. Describe all samples and collection methods.
4. Each sample should be individually packaged to avoid any possibility of cross contamination. Special care must be taken not to package samples with wet stains. Plastic packaging shall be avoided
5. Seal each sample so that contents cannot readily escape and opening the container will result in obvious damage or alteration to the container or seal. Use of patient ID stickers, evidence tape, or other adhesive tape to seal container is recommended. After sealing container, sign or initial container so that signature or initials cross the joiner point of the tape and packaging.
6. Mark each sample for later identification. Include: (1) initials of person who collected sample, (2) facility at which collected, (3) date and time of collection, (4) patient's name, (5) patient's account number, (6) description of contents, and (7) biohazard indicators, as appropriate.

Section 3 - Secure Storage to Protect Chain of Custody

1. The health care professional who collects samples shall maintain custody of all samples until all collection, packaging, and identification tasks are completed, and samples are transferred to the next responsible party.
2. Any facility at which samples will be stored shall establish and maintain a log for tracking all samples. The following information should be logged for each sample:
 - a. Patient name and account number
 - b. Date samples collected
 - c. Description of sample
 - d. Signature or initials of the collecting medical professional
 - e. Date and time entered into storage and initials of persons submitting and receiving samples
 - f. Date and time removed from storage, initials of person removing, and purpose of removal
3. All transfers of possession should be documented using the tracking log.
4. If the victim chooses not to report to law enforcement at the time of the exam, examination facility shall ensure that samples are stored securely for at least one year by either:
 - a. Storing samples or
 - b. Transferring samples to a designated storage facility.
5. Samples must be stored under circumstances that restrict access, in order to reduce the likelihood of tampering and protect the chain of custody. The number of individuals with access to storage area must be limited to the minimum number possible. Potential storage locations include drawers or cabinets with locks, double locks preferred. Potential storage locations within facilities include: Sexual Assault Nurse Examiners Offices, Security Offices, and/or Risk Management Offices.

Section 4 - Removal of Samples from Secure Storage Location

1. Samples shall only be permanently removed from storage if:
 - a. the victim authorizes release of samples and/or other information to law enforcement or a testing facility;
 - b. the established time frame for storage (one year) has lapsed;
 - c. the victim authorizes the destruction of the samples.
2. If the victim chooses not to report immediately, neither samples nor any other information may be released to law enforcement, except upon subsequent written authorization from the victim or court order.

Section 5 - Destruction of Samples

1. At least 14 days prior to the expiration of the required storage or 14 days prior to a scheduled destruction, the examination facility, if storing the samples, or designated storage facility should contact the victim to ascertain whether the victim wishes to (1) file a report with law enforcement and authorize release of the samples to law enforcement officials or (2) have the samples destroyed.
2. The facility shall only contact the victim as set forth at the time of collection or as set forth in a written request submitted by the victim thereafter.
3. If the facility is not able to contact the victim within one attempt, does not receive a reply communication within ten (10) days of an attempted contact, or if the victim decides not to file a report with law enforcement officials, the facility may destroy the samples in accordance with the facilities policy and procedure for destruction of biological samples.

(SAMPLE) PATIENT CONSENT FOR SEXUAL ASSAULT FORENSIC-MEDICAL EXAM

I understand that if I consent, an examination for evidence of sexual assault will be conducted.

I consent to a physical examination Yes No

I understand that the medical documentation and collection of evidence may include photographing injuries, which may include injuries to the genital area.

I consent to photographing of injuries Yes No

I understand that I may withdraw consent at any time for any portion of the examination.

I understand that I have the choice whether law enforcement are contacted (unless this falls under mandatory reporting of child abuse, neglect, or dependency).

I consent to the hospital contacting law enforcement Yes No

N/A due to child abuse, neglect, or dependency; Reported to _____

A forensic collection kit will be used to gather evidence, such as secretions for DNA testing.

I understand that if I consent, such evidence will be released to the police at this time; and that if I do not consent, such evidence will be preserved by the hospital for at least one year.

I consent to releasing evidence to law enforcement Yes No

Signature of patient _____

Date: _____

Signature of witness _____

Date: _____

Print name of witness _____

Date: _____

Consent Form for Sexual Assault Forensic-Medical Examinations Without Reporting to Law Enforcement and Consent for Follow-Up Contact

I, _____ (Patient Name) hereby authorize _____ (Medical Facility) and a Sexual Assault Nurse Examiner (SANE), physician, or other qualified medical professional to perform a sexual assault forensic-medical examination. I understand the examination includes, but is not limited to a complete head to toe assessment, documentation of injury, genital inspection, an internal speculum examination (if patient is female), and the collection of medical and/or forensic samples. I understand that I may refuse any portion of the exam or stop the exam at any time.

Consent for Collection of Samples, Taking of Photographs, and/or Use of Photos for Educational Purposes

I authorize the following: *(Please initial beside each statement that applies to you)*
_____ Drawing of blood and collection of other necessary specimens.
_____ Taking of photographs (including genitalia, if the examiner thinks it appropriate) that would be available for use as evidence in the prosecution of my assailant(s) if I decide to report the incident to law enforcement officials.
_____ Use of these photographs for educational purposes of medical personnel and other first responders on the condition that my identity will not be revealed in the photographs.

Impact of Non-reporting or Delayed Reporting

I understand: *(Please initial each line)*
_____ Not reporting the assault to law enforcement or making a delayed report greatly reduces the chances that the person(s) who assaulted me can be arrested and/or prosecuted.
_____ Other evidence that might normally be collected by law enforcement (such as items at the scene of the crime) may be permanently lost, and it may not be possible for law enforcement officials to interview the suspect(s), and/or potential witnesses.
_____ If the crime is not reported to law enforcement within 48 hours of the crime, I understand that I will need to provide a justifiable reason in a request for compensation from the Kentucky Claims Commission for expenses such as x-rays, additional medical treatment, or lost earnings. (NOTE: Costs related to the basic treatment provided during this SAFE Exam will be paid, regardless of whether a report is made.)

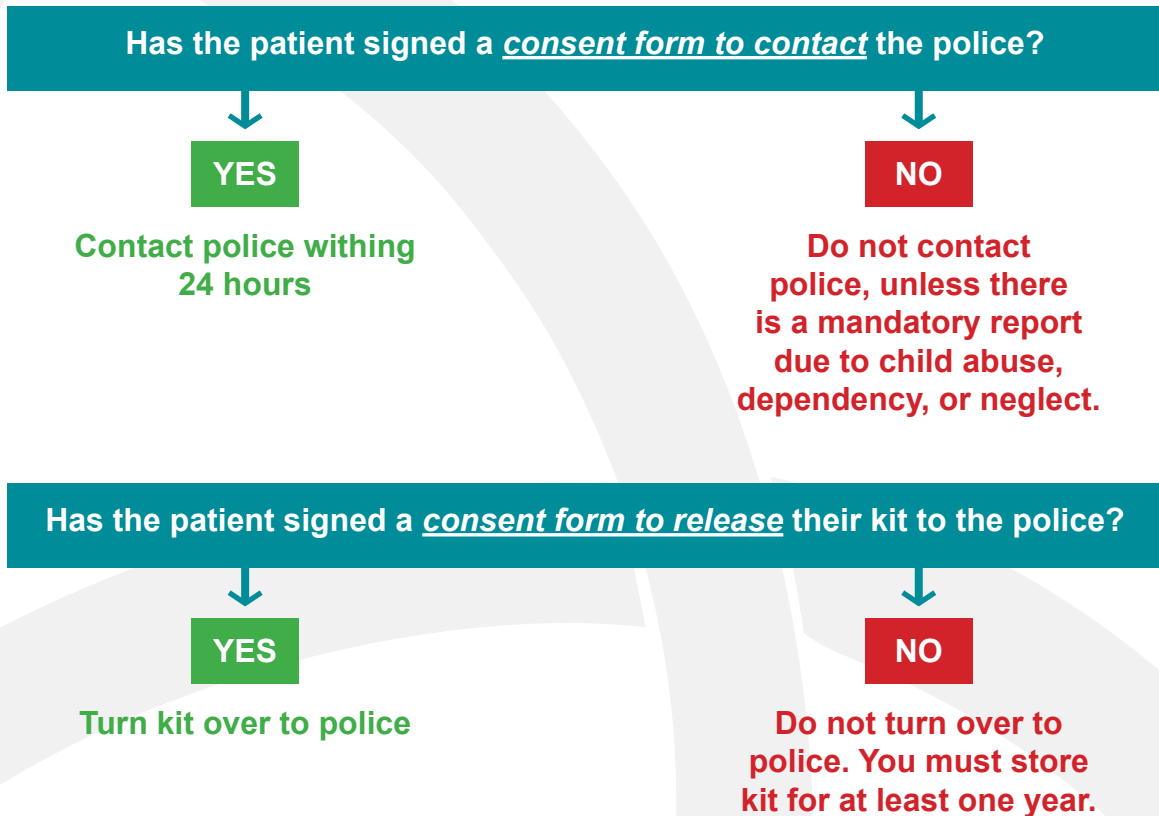
I assert that I choose not to report to law enforcement or release information/samples to law enforcement at this time.

_____ (signature) _____ (date)

WHAT TO DO WITH A FORENSIC EVIDENCE KIT AFTER COLLECTION?

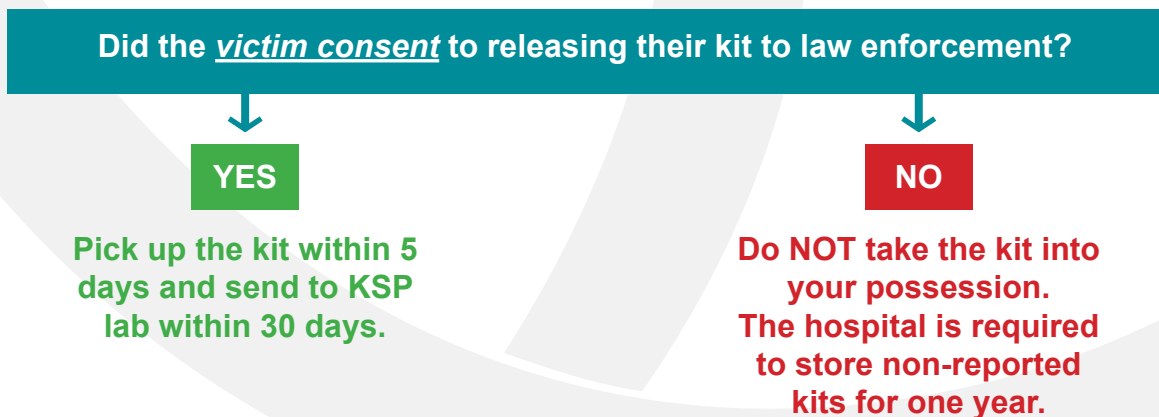
For forensic evidence kit collectors:

I collected evidence for a Sexual Assault Evidence Collection Kit (SAECK) (also known as Sexual Assault Forensic Evidence Kit; SAFE Kit), what do I do with it now?



For responding law enforcement officers:

I was called to respond to the provider who has collected a SAECK or SAFE Kit, should I take the kit into evidence?



KENTUCKY GENERAL MANDATORY REPORTING

WHAT?	WHO must report?	WHEN?	TO WHOM?
<p>Child Abuse, Dependency, Neglect¹</p>	<p>Everyone, except for attorney-client and clergy-penitent for communications made within those relationships</p>	<p><u>If harm/abuse/neglect is caused or allowed by:</u></p> <ul style="list-style-type: none"> • parent/caregiver • person in position of authority or special trust • person 21 y.o. or older when victim <16 y.o. for sexual abuse/exploitation • any person for human trafficking (labor and sex) 	<p>Must report to one of the following:</p> <ul style="list-style-type: none"> • Cabinet² – Child Protective Services, • Local law enforcement, • Kentucky State Police, OR • County or Commonwealth Attorney
<p>Vulnerable Adult Abuse or Neglect³</p>	<p>Everyone, no exceptions</p>	<p><u>If any person harms/neglects an individual who is 18 y.o. or older who has a mental or physical disability that limits ability to care and/or protect themselves.</u></p>	<p>Must report to:</p> <ul style="list-style-type: none"> • Cabinet⁴ – Adult Protective Services

*The chart above is applicable to the general population, however, there are additional mandates for reporting or providing information based on certain professions. For the KY Profession-Specific Mandatory Information and Reporting Laws chart, please contact KASAP.

¹Ky. Rev. Stat. §600.020 and §620

²Statewide Abuse Reporting Hotline, 1-877-KYSAFE1 or 1-877-597-2331

³Ky. Rev. Stat. §209

⁴Statewide Abuse Reporting Hotline, 1-877-KYSAFE1 or 1-877-597-2331

What if I am not sure?

- The law requires reporting when “any person knows or has reasonable cause to believe that a child is dependent, neglected, or abused...” and “any person...having reasonable cause to suspect that an adult has suffered abuse, neglect, or exploitation...” So, you don’t have to be sure.
- Furthermore, “failure to report” is a crime. Therefore, reporting is the safest thing to do if you suspect abuse or neglect.
- Also, if the report was made “in good faith,” the person who reported is immune from legal liability.

Tips for Fulfilling Your Duty to Report

- When reporting is required, it should be done immediately.
- You should not investigate prior to making a report.
- The duty to report abuse overrides most professional “privileges” that generally protect confidential communications. So, when you have a duty to report, you must do so regardless of privilege. The only exception is for child abuse reporting, when the communication is made within the attorney-client or clergy-penitent relationship.
- Since the duty to report applies to individuals, you should make all reports directly to appropriate government officials, even if you are told that a report has already been made. Though your institution’s policies and procedures may require you to tell someone inside your organization, internal reporting does not fulfill your legal duty to report.
- In many cases, it is difficult to “substantiate” reports of abuse, especially sexual abuse. Therefore, it can be critical to file additional reports if you learn of violence that occurred after a report was made. You may also ask to speak directly with a supervisor and/or contact the Office of Ombudsman at 1-800-372-2973.
- Reports can be made anonymously. However, if you do not give your name, it may be especially important to document the reporting in your own records.
- The law requires that the source of a report of abuse, neglect or exploitation is kept confidential unless court ordered to be released.
- Kentucky’s mandatory reporting laws are codified in: KRS 600.020 and KRS 620 for child abuse and KRS 209 for adults with disabilities.

NOTE: DO NOT report all sexual assaults based on the fact that a sexual assault occurred. Reporting sexual assaults follows the same reporting guidelines as above. Remember, reporting without client/patient/victim consent, except where the law requires, is a violation of Kentucky state law as well as federal laws such as HIPAA and VAWA.

**Outside of mandatory reporting, anytime a victim consents to contacting police or others for services, it is best practice to have them sign a consent/release form.*

This document is not legal advice and should only be used for guidance.

NOTES

published by
Kentucky Association of Sexual Assault Programs
PO Box 4028, Frankfort, KY 40604
www.kasap.org

This project was supported by Grant Number VAWA ARRA-2009-KASAP-00046 awarded through the Kentucky Justice and Public Safety Cabinet by the Office on Violence Against Women, U.S. Department of Justice. The Opinions, findings, conclusions and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women or the Kentucky Justice and Public Safety Cabinet.

Update and reprint supported with state general funds, contract # 1600001348, June 2018