

**INFORMATION ABOUT FORENSIC MEDICAL EXAMS FOR VICTIMS WHO DO NOT WANT TO
COOPERATE WITH LAW ENFORCEMENT (HB 08-1217)
FOR
LAW ENFORCEMENT AGENCIES**

The Violence Against Women Act (VAWA) is a federally funded program that promotes a coordinated, multidisciplinary approach to improving the criminal justice system's response to victims of sexual assault and domestic violence. The state of Colorado receives approximately 1.7 million dollars annually from the U.S. Department of Justice, Office on Violence Against Women to provide grants to victim services, law enforcement, district attorneys, and court agencies to address domestic violence, sexual assault and stalking. In order to continue to be eligible to receive VAWA funds, states must meet all applicable requirements, including certifying that they are in compliance with the statutory eligibility requirements of the Violence Against Women Act.

In the 2008 legislative session, the General Assembly passed HB08-1217 in order to assure Colorado's compliance with federal VAWA requirements and to ensure continued receipt of VAWA funds. HB08-1217 accomplishes four purposes: 1) it enables victims of sexual assault to receive a forensic medical exam without having to participate in the criminal justice system or cooperate with law enforcement as a requirement for receiving such an exam; 2) it provides that victims who do not want to cooperate with law enforcement or participate in the criminal justice system do not have to pay the cost of the forensic medical exam; 3) it makes clear that victims of a sexual offense may not be asked or required to submit to a polygraph examination as a condition of proceeding with a criminal investigation or prosecution of a sexual offense and 4) it provides for the storage of forensic evidence collection kits provided to victims who do not wish to cooperate with law enforcement.

Underreported/Unreported Nature of Sexual Assault Cases

There are many reasons why a victim of a sexual assault may want a forensic medical exam, but not want to go forward with the investigation and prosecution of the case.

- Sexual assault victims rarely report to law enforcement first; usually they report first to a close friend or relative, a health care provider, or a non-profit victim advocate.
- Law enforcement is more likely to be notified of sexual assaults that are committed by strangers than by someone the victim knows.
- Victims are often unwilling to report a sexual assault for fear of not being believed or being blamed for the crime.
- If victims of sexual assault do report, it is common for them to postpone reporting the incident to law enforcement or anyone else. Victims often delay reporting a sexual assault for days, weeks, months, or even years. Many victims never disclose the assault to anyone, including their closest friends.

How This Statute Will Help Victims of Crime

At times, victims of sexual assault do not immediately want to cooperate with law enforcement due to the very personal nature of the investigation and because they may want to consider all of their options before proceeding. This legislation allows sexual assault victims the opportunity to have forensic evidence collected while allowing them time to consider their options as to cooperating with the investigation of the crime.

Evidence collected during the forensic examination has been found to hold a direct correlation to a successful prosecution. Not only the actual evidence, but also the circumstances in which it was collected plays a critical role in the future of the case well before it enters the courtroom. Physical evidence connecting the suspect to the crime is a critical variable for prosecutors considering how and whether they will proceed with a case.

A timely, well-done forensic examination has the potential of addressing many of the concerns of sexual assault victims and can increase the likelihood, through the documentation of visible injuries and evidence collected, of the successful investigation and prosecution of sex offenders, should victims decide to cooperate with the investigation of the case.

How Does This Statute Affect Law Enforcement Agencies?

- **FORENSIC EXAMS:** Victims who want to have a forensic medical exam but do not want to cooperate with law enforcement can go to a medical facility that provides forensic exams and receive one at no cost to them. The State of Colorado - Division of Criminal Justice (DCJ) will pay the cost of the forensic exam when the victim of the sexual assault crime does not want to cooperate with the investigation of the case.
- **PAYMENT:** DCJ will pay only the cost of the forensic medical exam. **Any additional medical expenses will be the responsibility of the patient.** The medical facility will bill DCJ directly. If a law enforcement agency inadvertently receives a bill from a medical facility for a forensic medical exam done for a victim who does not want to cooperate with law enforcement, the bill should be sent to DCJ for payment.
- **MANDATORY REPORTING:** Under Colorado law, licensed medical personnel are required to report the crime to a law enforcement agency. HB 08-1217 does not affect or change the mandatory reporting law outlined in C.R.S. § 12-36-135 and does not allow for anonymous reporting. As such, the name of a victim who has a forensic medical exam but does not wish to cooperate with law enforcement will be provided to the law enforcement agency. The only change is that the victim DOES NOT have to cooperate with law enforcement or participate in the criminal justice system to get the forensic medical exam.
- **VICTIM COMPENSATION:** Colorado does have a victim compensation program that provides assistance with medical bills. One of the requirements of receiving victim compensation is that the victim has cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant. The victim compensation board can waive this requirement for good cause. The victim who receives a forensic medical exam but does not want to cooperate with law enforcement would need to contact the victim compensation program in the jurisdiction where the crime occurred and discuss her/his situation with the victim compensation administrator about whether the board may or could waive this requirement. Victims can contact the Colorado Division of Criminal Justice to locate the appropriate victim compensation administrator at 303-239-5719 or toll-free at 1-888-282-1080.
- **DOMESTIC VIOLENCE:** In a domestic violence case, other pertinent domestic violence laws may affect the actions taken by the law enforcement agency.

Storing Forensic Medical Exam Evidence/Samples when the Victim Does Not want to Cooperate with Law Enforcement

- When a law enforcement agency receives a report from medical personnel that a forensic medical exam was completed, the law enforcement agency where the crime occurred is required to pick-up the forensic kit and store it for a minimum of two years. If it is unknown where the crime occurred, then the law enforcement jurisdiction where the hospital/medical facility is located will be required to pick-up the forensic kit and store it for a minimum of two years. If the victim decides that she/he would like to discuss the crime with the law enforcement agency, she/he will need to contact the law enforcement agency directly.
- The timelines outlined for the retention of the forensic evidence collection kit provided for a victim who does not want to cooperate with law enforcement apply to situations in which a report has been made but an investigation is not initiated. In such circumstances, HB 08-1217 [§18-3-407.5 (3) (c) C.R.S.] requires that the law enforcement agency maintain the evidence from the forensic exam for 2 years.
- If at any point an investigation is commenced, either through the victim's subsequent cooperation or through independent action by the law enforcement agency, the storage requirements outlined in HB 08-1217 would no longer apply. Instead, HB 08-1397 (Concerning the Evidence Collected in Criminal Cases) would require the retention of the samples as evidence and its corresponding statutory provisions would apply. The provisions of the legislation (HB 08-1397) should be consulted for specific requirements that vary depending on the nature of the crime and the results of any prosecution.
- The forensic exam bill [HB 08-1217 - §18-3-407.5 (3) (c) C.R.S.] and the subsequently signed Evidence Collected in Criminal Cases bill (HB 08-1397 – §18-1-1102 C.R.S.) both refer to storage of items that may contain DNA evidence. It is the opinion of the Division of Criminal Justice that the two-year retention rule outlined in HB 08-1217 applies to a report from the hospital with an affirmative statement that the victim does not wish to cooperate with an investigation. As such, no investigation into the case is initiated. However, this opinion is not binding authority and you are encouraged to consult with the District Attorney's Office in your jurisdiction regarding specific issues concerning the length of time samples from forensic medical exams should be retained.

Please contact the Colorado Division of Criminal Justice for further information at 303-239-5719 or email debbie.kasyon@cdps.state.co.us or check our website at <http://dcj.state.co.us/ovp/VAWA>.