

**INFORMATION ABOUT FORENSIC MEDICAL EXAMS FOR VICTIMS OF SEXUAL ASSAULT
WHO DO NOT WANT TO COOPERATE WITH LAW ENFORCEMENT (HB 08-1217)
FOR
SANE PROGRAMS & MEDICAL FACILITIES THAT PROVIDE FORENSIC
MEDICAL EXAMS**

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 that 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. The 2005 reauthorization of the VAWA statute included, among other provisions, a requirement that forensic medical examinations be afforded to all sexual assault victims regardless of their decision to participate in the criminal justice system and/or cooperate with law enforcement. Moreover, the reauthorization requires that such victims not be charged with the expenses related to the exam.

In the 2008 legislative session, the General Assembly passed HB08-1217, which 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. In addition, such victims do not have to pay the cost of the forensic medical exam.

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 go first to a close friend or relative, a health care provider, or a 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. Victims do not report for reasons including: 1) they knew or are related to their assailant; 2) they are intimidated by the assailant's position, power, or social status; 3) they engaged in drug or alcohol use or willingly entered the assailant's car or apartment; 4) fear of retaliation from the offender; 5) fear of being blamed by others; 6) fear of their names being made public by the news media.
- 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, and many 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 that prosecutors consider when determining 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 this Statute Affects SANE Programs/Medical Facilities that Provide Forensic Medical Exams:

- **REPORT THE CRIME:** The new legislation does not change anything about the current procedures as to how sexual assault cases are handled when the victim **wants** to report the crime to law enforcement. When the victim does not want to cooperate with law enforcement or participate in the criminal justice system, the medical provider must still report the crime to law enforcement pursuant to C.R.S. § 12-36-135. HB 08-1217 does not affect or change the mandatory reporting law C.R.S. § 12-36-135 and does not allow for anonymous reporting. If the location of the crime is known, that law enforcement agency should be contacted. If the location is unknown, the law enforcement agency local to the hospital should be contacted.
- **PROVIDE A FORENSIC EXAM:** In those instances when a victim of sexual assault requests a forensic medical exam but indicates she/he does not want to cooperate with law enforcement, the exam should be provided to the victim.
- **BILLING:** The Division of Criminal Justice (DCJ) will pay for the forensic medical exam if the victim does not want to cooperate with law enforcement. The bill/invoice should be sent directly to DCJ when the victim does not wish to cooperate with law enforcement at the time the forensic medical exam is completed. Please see address below. Keep in mind that DCJ will only pay for the forensic medical exam itself (**the same cost that a law enforcement agency would pay**). **All other medical costs are the responsibility of the patient.**

What Should I Do When a Victim of Sexual Assault Wants a Forensic Medical Exam but Does Not Want to Cooperate with Law Enforcement?

If a person comes to your medical facility or SANE program and informs you that she/he has been the victim of sexual assault, but she/he does not want to cooperate with law enforcement, let them know the following information:

- **LAW ENFORCEMENT WILL BE CONTACTED:** Let the victim know that under Colorado law, licensed medical personnel are required to report the crime to a law enforcement agency and that the victim's name will be included in the report.
- **FORENSIC EXAM CAN BE PROVIDED:** Let the victim know she/he can receive a forensic exam at no cost to them and that the State of Colorado, Division of Criminal Justice will only pay the cost of the forensic medical exam. **Any additional medical expenses will be the responsibility of the patient.**
- **VICTIM COMPENSATION MAY BE AN OPTION:** Let the victim who wants a forensic medical exam but does not want to cooperate with law enforcement know that Colorado has a victim compensation program that provides assistance with medical bills. However, because 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 will need to contact the compensation program in the jurisdiction where the crime occurred to see if the board may or could waive the cooperation requirement. Victims can contact the Colorado Division of Criminal Justice to locate the appropriate victim compensation administrator by calling 303-239-5719.
- **FORENSIC EVIDENCE COLLECTION KIT:** Let the victim know that the forensic evidence collection kit will be turned over to the appropriate law enforcement agency. The victim will be notified by the medical facility of which law enforcement agency received the kit and that it will be stored at the law enforcement agency. 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.

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>

Bills/invoices should be sent to:

Colorado Division of Criminal Justice
C/O VAWA Administrator
700 Kipling Street, Suite 1000
Denver, CO 80215-5865