

RAPE AND SEXUAL ASSAULT  
REPORTING REQUIREMENTS  
FOR  
COMPETENT ADULT VICTIMS

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*Contains:*

- *Summary of the nation's rape and sexual assault reporting requirements for competent adult victims*
- *List of issues that may be encountered when interpreting rape and sexual assault reporting laws*
- *State statutes relevant to rape and sexual assault reporting requirements for competent adult victims*

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## **SUMMARY OF LAWS RELEVANT TO RAPE AND SEXUAL ASSAULT REPORTING FOR THE VICTIMIZATION OF COMPETENT ADULTS**

Although most states do not per se require medical personnel to make a report when they have treated a rape or sexual assault victim<sup>1</sup> who is a competent adult,<sup>2</sup> other state statutes may have the impact of requiring that a report be made. Laws requiring medical personnel to report that they have treated a competent, adult rape victim can be broken down into the following categories: (1) laws that specifically require medical professionals to report treatment of a rape victim to law enforcement; (2) laws that require the reporting of injuries that may include rape; (3) laws relating to other crimes or injuries which may impact rape and sexual assault victims; and (4) laws regarding sexual assault forensic examinations which may impact rape and sexual assault reporting. This document discusses each of the four categories of rape reporting statutes and provides the specific language of the statutes.<sup>3</sup>

Many states require medical personnel to make a report to law enforcement and / or social services following their treatment of a child, elderly person or vulnerable adult who was the victim of a crime. These statutes, however, are not included in this

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<sup>1</sup> The terms *rape* and *sexual assault* are used interchangeably in this document. For specific definitions of *rape* and *sexual assault*, please refer to state law.

<sup>2</sup> *Competent adult* is used to represent those adults who are viewed by the legal system as competent. Please refer to state law for definitions or interpretations of what constitutes a *competent adult* in a given state.

<sup>3</sup> Note that some medical personnel may interpret statutes differently than this article. For example, some providers in Oklahoma interpret 10 Okl. St. § 7104 as requiring a report to be made when the victim is a competent adult. However, the statute appears in Chapter 71 of Title 10, which is Oklahoma's Child Abuse Reporting and Prevention Act; therefore, it does not clearly mandate that a report be made when the victim is a competent adult.

summary. Rather, this summary focuses on the reporting requirements related to the medical treatment of competent adults who are the victims of rape or sexual assault. The purpose of this document is to provide an overview of the issues that may arise with respect to mandatory requirements. Please note that this document is intended for informational purposes only and does not constitute legal advice. Communities should work with local attorneys to insure that their interpretation of relevant law is correct.

### **LAWS WHICH MANDATE RAPE REPORTING**

The law requires medical personnel to report rape when the victim is a competent adult in the following states:

- Sex Crimes
  - Massachusetts ALM GL ch. 112, § 12A1/2
    - Rape or sexual assault (but may not identify the victim)
  - Cal Pen Code § 11160
    - Must report injury if it is the result of assaultive or abusive conduct (defined to include sexual battery, assault with intent to commit rape, sodomy or oral copulation, rape, spousal rape, sodomy, oral copulation, sexual penetration)
  - Kentucky, KRS § 209.030
    - Must report incidents of spousal rape to Kentucky Cabinet for Family and Children.

**LAWS WHICH MANDATE THE REPORTING OF INJURIES THAT MAY INCLUDE RAPE**

In certain states, medical personnel are required to report non-accidental or intentional injuries. If a patient has suffered a non-accidental or intentional injury in addition to the rape, the injury will generally have to be reported. The question which arises in these states is whether a rape must be reported when the patient has suffered no injury other than the rape itself.

- Statutes that require the reporting of non-accidental or intentional injuries
  - Alaska, Alaska Stat. 08.64.369 (If the injury is likely to cause death)
  - California, Cal Pen Code § 11160
  - Colorado, C.R.S. 12-36-135
  - Florida, Fla. Stat. § 790.24
  - Georgia, O.C.G.A. § 31-7-9
  - Michigan, MCLS § 750.411
  - New Hampshire, RSA § 631:6
  - Ohio, ORC Ann. 2921.22
  - Pennsylvania, 18 Pa.C.S. § 5106 (Exception for domestic violence cases unless the injury constitutes serious bodily injury or was caused by a deadly weapon)

In certain states, medical personnel are required to report injuries caused by criminal conduct. If a patient has suffered an injury in addition to the rape, the injury will generally have to be reported. Again, the question which arises in these states is whether a rape must be reported when the patient has suffered no injury other than the rape itself.

- Statutes that require the reporting of injuries caused by criminal conduct

- Arizona, A.R.S. § 13-3806 (Material injuries resulting from illegal or unlawful acts)
- California, Cal Pen Code § 11160 (Injuries that are the result of assaultive or abusive conduct)
- Colorado, C.R.S. 12-36-135
- Hawaii, HRS § 453-14 (Any injury that would seriously maim, produce death, or has rendered the injured person unconscious, caused by the use of violence or sustained in a suspicious or unusual manner)
- Idaho, Idaho Code § 39-1390
- Illinois - 20 ILCS 2630/3.2
- Iowa, Iowa Code § 147.111
- Massachusetts ALM GL ch. 112, § 12A1/2 (Rape or sexual assault must be reported but may not identify the victim)
- Nebraska, Neb. Rev. ST. 28-902 (Wounds or injuries of violence)
- New Hampshire, RSA § 631:6
- North Carolina, N.C. Gen. Stat. § 90-21.20
- North Dakota, N.D. Cent. Code, § 43-17-41
- Ohio, ORC Ann. 2921.22; ORC Ann. 2921.22 (Domestic violence is an exception; normally felonies and any serious physical harm resulting from an offense of violence must be reported.)
- Pennsylvania - 18 Pa.C.S. § 5106 (Exception for domestic violence cases)
- Tennessee, Tenn. Code Ann. § 38-1-101 (Injuries caused by violence)
- Utah, Utah Code Ann. 26-23a-1
- West Virginia, W. Va. Code § 61-2-27
- Wisconsin, Wis. Stat. 146.995

### **LAWS RELATING TO OTHER CRIMES OR INJURIES WHICH MAY IMPACT RAPE VICTIMS**

Some states require certain types of injuries to be reported by medical personnel to law enforcement. If a rape victim presents with any of these injuries, medical personnel will be required to report the injury to law enforcement. These injuries include injuries caused by firearms, stab wounds or non-accidental wounds caused by a

knife or sharp pointed instrument, injuries caused with a deadly weapon and burns, among others.

- Injuries caused by firearms
  - Alaska, Alaska Stat. § 08.64.369
  - Arizona, A.R.S. § 13-3806
  - Arkansas, A.C.A. § 12-12-602
  - California, Cal Pen Code § 11160
  - Colorado, C.R.S. 12-36-135
  - Connecticut, Conn. Gen. Stat. § 19a-490f
  - Delaware, 24 Del. C. § 1762
  - District of Columbia, D.C. Code § 7-2601
  - Florida, Fla. Stat. § 790.24
  - Hawaii, HRS § 453-14
  - Idaho, Idaho Code § 39-1390
  - Iowa, Iowa Code § 147.111
  - Illinois, 20 ILCS 2630/3.2
  - Indiana, Ind. Code Ann. § 35-47-7-1
  - Kansas, KS § 21-4213
  - Louisiana, La. R.S. § 14:403.5
  - Maine, 17 AMRS § 512
  - Maryland, Md. Code Ann. § 20-703
  - Massachusetts, ALM GL ch. 112, § 12A.
  - Michigan, MCLS § 750.411
  - Minnesota, Minn. Stat. § 626.52
  - Mississippi, MS § 45-9-31
  - Missouri, § 578.350 R.S. Mo.
  - Montana, MCA § 37-2-30
  - Nevada, NRS § 629.041
  - New Hampshire, RSA § 631:6
  - New Jersey, N.J. Stat. § 2C:58-8
  - New York, NY CLS Penal § 265.25
  - North Carolina, N.C. Gen. Stat. § 90-21.20
  - North Dakota, N.D. Cent. Code, § 43-17-41
  - New Hampshire, RSA § 631:6
  - Ohio, ORC Ann. 2921.22 (Exception for domestic violence cases)
  - Oregon, ORS § 146.750
  - Pennsylvania, 18 Pa.C.S. § 5106 (Exception for domestic violence cases)

- Rhode Island, R.I. Gen. Laws § 11-47-48
  - South Carolina, S.C. Code Ann. § 16-3-1072
  - South Dakota, S.D. Codified Law § 21-13-10
  - Tennessee, Tenn. Code Ann. § 38-1-101
  - Texas, Tex. Health & Safety Code § 161.041
  - Utah, Utah Code § 26-23a-2
  - Vermont, 13 V.S.A. § 4012
  - Virginia, Va. Code Ann. § 54.1-2967.
  - West Virginia, W. Va. Code § 61-2-27
  - Wisconsin, Wis. Stat. §146.995
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- Stab wounds or non-accidental wounds caused by a knife or sharp pointed instrument
    - Alaska, Alaska Stat. § 08.64.369
    - Arizona, A.R.S. § 13-3806
    - Arkansas, A.C.A. § 12-12-602
    - Colorado, C.R.S. 12-36-135
    - Delaware, 24 Del. C. § 1762
    - Hawaii, HRS § 453-14
    - Indiana, Ind. Code Ann. § 35-47-7-1
    - Iowa, Iowa Code § 147.111
    - Kansas, KS § 21-4213
    - Massachusetts, ALM GL ch. 112, § 12A.
    - Michigan, MCLS § 750.411
    - Mississippi, MS § 45-9-31
    - Montana, MCA § 37-2-302
    - Nevada, NRS § 629.041
    - New Jersey, N.J. Stat. § 2C:58-8
    - New York, NY CLS Penal § 265.25
    - North Carolina, N.C. Gen. Stat. § 90-21.20
    - North Dakota, N.D. Cent. Code, § 43-17-41
    - Ohio, ORC Ann. 2921.22 (Exception for domestic violence cases)
    - Oregon, ORS § 146.750
    - South Dakota, S.D. Codified Laws § 23-13-10
    - Tennessee, Tenn. Code Ann. § 38-1-101
    - Utah Code Ann. 26-23a-1
    - Virginia, Va. Code Ann. § 54.1-2967.
    - West Virginia, W. Va. Code § 61-2-27

- Injuries caused by a weapon
  - District of Columbia, D.C. Code § 7-2601 (dangerous weapon)
  - Michigan, MCLS § 750.411 (deadly weapon)
  - Minnesota, Minn. Stat. § 626.52 (dangerous weapon)
  - New Jersey, N.J. Stat. § 2C:58-8
  - Utah Code Ann. 26-23a-1 (deadly weapon)
  
- Burn injuries
  - Alaska, Alaska Stat. § 08.64.369
  - Delaware, 24 Del. C. § 1762
  - Indiana, Ind. Code Ann. § 35-47-3
  - Louisiana, La. R.S. § 14:403.4
  - Massachusetts, ALM GL ch. 112, § 12A
  - Minnesota, Minn. Stat. 626.52
  - Nevada, NRS § 629.045
  - New Jersey, N.J. Stat. § 2C:58-8
  - New York, NY CLS Penal § 265.26
  - Ohio, ORC Ann. 2921.22
  - Wisconsin, Wis. Stat. §146.995
  
- Suspicious wounds
  - Minnesota, Minn. Stat. 626.52

## **STATUTES ADDRESSING PAYMENT FOR FORENSIC SEXUAL ASSAULT EXAMINATIONS**

The laws listed below relate to payment for forensic sexual assault examinations. Significantly, this summary only applies to forensic evidence collection; victims cannot be denied medical treatment. The Violence Against Women Act precludes states from

receiving STOP funding<sup>4</sup> unless the state or unit of local government incurs the full out-of-pocket costs of forensic medical examinations for victims of sexual assault. (28 C.F.R. § 90.14.) However, many states have enacted statutes that impose requirements in order for the cost of the examination to be covered. For example, a number of states have statutes that require that sexual assault be reported to law enforcement before a victim may receive a forensic sexual assault examination without cost to the victim. Some have additional requirements such as time limits for the performance of the examination or cooperation with law enforcement. VAWA III<sup>5</sup> calls the practice of requiring victims to report to law enforcement into question. It states: "Nothing in this section shall be construed to permit a State, Indian tribal government, or territorial government to 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, reimbursement for charges incurred on account of such an exam, or both."<sup>6</sup> These statutes will generally only affect rape reporting requirements when payment for the examination is at issue.

- Alabama, Ala. Admin. Code 262-X-11-.01
  - Payment for the forensic examination shall be made regardless of whether the victim pursues prosecution.
- Alaska, Alaska Stat. § 18.68.040
  - Victims may not be required to pay for examinations.

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<sup>4</sup> The Stop (Services - Training - Officers - Prosecutors) Violence Against Women Formula Grant Program.

<sup>5</sup> H.R. 3402.

<sup>6</sup> H.R. 3402, sec. 101(f). This language will be added to 42 U.S.C. 3796gg-4.

- Arkansas, A.C.A. § 12-12-403
  - Victims do not have to pay for forensic examination if the rape is reported to law enforcement and the examination is done within 72 hours.
- Arizona, A.R.S. § 13-1414
  - Examination is paid for by the county where it is necessary to secure evidence that a person has been sexually assaulted.
- Colorado, CRS § 18-3-407.5
  - Examination is paid for by referring law enforcement agency.
- Connecticut, Conn. Gen. Stat. § 19a-112a
  - Examination is paid for when the purpose is evidence collection.
- Delaware, 11 Del. C. 9019
  - Examination is paid for when the purpose is evidence collection.
- District of Columbia, D.C. Code § 4-506
  - Victim may receive compensation for a sexual assault examination.
- Florida, F.S.A. S 960.28
  - Examination is paid for when reported to law enforcement.
- Georgia, O.C.G.A. § 16-6-1
  - Examination is paid for when the purpose is evidence collection.
- Hawaii, HRS 351-15
  - Fees are paid for from funds appropriated for the examination.
- Idaho, Idaho Code § 19-5303 and § 72-1019
  - Examination is paid for when the purpose is evidence collection.
- Indiana, Burns Ind. Code Ann. § 5-2-6.1-39 and § 16-21-8-5
  - Victim must report within 96 hours and must cooperate to the fullest extent possible to solve the crime.
- Iowa, 915.41
  - Examination is paid for when the purpose is evidence collection.
- Kansas, KS § 65-448
  - Examination is paid for when done at the request of a law enforcement officer.
- Kentucky, KRS § 216B.400
  - Examination is paid for when the purpose is evidence collection.
- Maine, Code Me. R. 26-550 Ch. 8, § 1
  - Victims' Compensation fund will pay for examinations.
- Maryland, MD ADC 07.06.07.05
  - Examinations will be paid for when they conform to standards adopted by the state or meet the evidentiary requirements of the local prosecutor.

- Minnesota, Minn. Stat. § 609.35
  - Costs of a sexual assault forensic examination shall be paid by the county when the purpose is to gather evidence.
- Mississippi, MS Code § 99-37-25
  - The Division of Victim Compensation will only pay for the examination when the victim cooperates with law enforcement.
- Missouri, MS § 191.225
  - The department of health and senior services shall pay for the examination when a report is made with the prosecuting attorney.
- Montana, Mont. Code § 46-15-411
  - Examination is paid for when directed by law enforcement or for the purpose of investigation, prosecution or resolution of an offense. Office of restorative justice shall pay for medical examinations that are not the responsibility of local law enforcement.
- Nebraska, RRS Neb. 13-607
  - Examination is paid for by referring law enforcement agency.
- Nevada, NRS § 217.310 and NRS § 449.244
  - Filing of report is a prerequisite to having county pay for medical or psychological treatment.
- New Hampshire, RSA § 21-M:8-c
  - Examination must be done to gather evidence of a crime.
- New Jersey, N.J. Stat. § 52:4B-59
  - There is a Statewide Sexual Assault Nurse Examiner Program Fund.
- New Mexico, N.M. Stat. Ann. § 29-11-7
  - Victims are entitled to free examinations.
- New York, NY CLS Exec § 631
  - Examinations will be paid for when the sexual assault is reported within a reasonable time.
- North Carolina, N.C. Gen. Stat. § 143B-480.2
  - Victims must report to law enforcement within 5 days and examination must be performed within 5 days.
- North Dakota, N.D. Cent. Code, § 54-23.4-06
  - Victims may only receive crime victim's compensation if they report the sexual assault within 72 hours, unless there is good cause shown.
- Ohio, ORC Ann. § 2907.28
  - Examination is paid for when the purpose is a possible prosecution.

- Oklahoma, 21 OK St. § 142.20
  - Victim can be reimbursed for the costs of the examination with approval by the district attorney or an assistant district attorney.
- Oregon, OR Admin. R. 137-084-0010
  - Examination must be completed within 168 hours and use of the Oregon State Police SAFE kit must have been authorized by law enforcement.
- Pennsylvania, 18 P.S. § 11.707.
  - Hospital or medical provider may submit a claim to Office of Victim Services if insurance does not pay for examination or victim requests that insurance not be billed.
- Rhode Island, R.I. Gen. Laws § 23-17-26
  - Medical provider must provide examination without discrimination as to source of payment.
- South Carolina, S.C. Code Ann. § 16-3-1350
  - Examination is paid for when reported to law enforcement.
- South Dakota, S.D. Codified Laws § 22-22-26
  - The forensic examination will be provided without cost if the sexual assault is reported to the state.
- Texas, Tex. Code Crim. Proc. art. 56.08
  - Examination is paid for by referring law enforcement agency but must be reported within 96 hours.
- Utah, Utah Code § 63-25a-411
  - Examinations must document criminally injurious conduct.
- Vermont, 32 V.S.A. § 1407
  - The state shall pay for the examination.
- Virginia, Va. Code Ann. § 19.2-165.1
  - All medical fees involved in the gathering of evidence where medical evidence is necessary to establish a crime has occurred shall be paid by the Commonwealth.
- West Virginia, W. Va. C.S.R. § 168-1-3 and W. Va. Code § 61-8B-16
  - Investigating officer and prosecuting attorney must approve the examination, which must be conducted within a reasonable time period.
- Wisconsin, Wis. Stat. § 949.08
  - Crime victim's compensation will only pay if victim reports within five days and cooperates with law enforcement.
- Wyoming, Wyo. Stat. § 6-2-309
  - Examination is paid for when reported to law enforcement.

NOTE:

The state statutes which follow are grouped as follows:

- Statutes that mandate rape reporting
- Statutes addressing payment for examinations
- Reporting statutes that may impact rape victims
  - Includes laws which mandate the reporting of injuries that may include rape (Category 2, supra)
  - Includes additional reporting statutes (Category 3, supra)

ISSUES THAT MAY BE ENCOUNTERED WHEN INTERPRETING RAPE REPORTING LAWS

1. What are the state's reporting laws?
  - With respect to rape and other sex crimes?
  - With respect to other non-sex crimes?
  - Does the law change if the crime also constitutes domestic violence?
2. Who is the medical treatment provider? The statutes listed generally described the duty of various medical personnel to report. In certain states, if a victim goes to a community based sexual assault nurse examiner program as opposed to a hospital, the provider may not be required to report the rape or other injury.
3. Has the patient suffered an injury in addition to the rape itself? Does this change the reporting requirements?
4. Who is required to report and to whom are they required to report?
5. What information does the report have to contain? What is the procedure for reporting? What is the format of the report?
6. Who is paying for the examination? What happens in states where the examination will only be paid for if the victim reports the examination to law enforcement? What are the state's laws with respect to the denial of medical treatment to a patient if the patient chooses only to receive medical treatment and not a forensic examination?
7. What is the penalty for failure to report? States have different penalties for the failure of medical personnel to comply with reporting laws. In some states, the consequences may be criminal, while in other states, the consequences are civil.
8. If an examination is done and no report is made to law enforcement, what happens to the evidence collected?

## ALABAMA

***SUMMARY: There is no mandatory reporting requirement. Payment for the forensic examination shall be made regardless of whether the victim pursues prosecution.***

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **Ala. Admin. Code r. 262-X-11-.0. Sexual Assault Examination Payments.**

Program Description: This section provides for payment of the initial forensic examination which is performed on victims of sexual offenses for the purpose of obtaining evidence to pursue criminal charges against sexual assault offenders. Expenses incurred for processing sexual assault examination kits are eligible. Sexual assault examination kits developed by the Alabama Department of Forensics and comparable kits shall be eligible for payment pursuant to this section. Child sexual assault examinations shall also be eligible for payment pursuant to this section.

(1) Application and Payment Procedures

(a) Charges for the sexual assault examination must be submitted by a hospital, physician or SANE (Sexual Assault Nurse Examiner) program to be eligible for payment pursuant to this section.

(b) Payment for the examination shall be made regardless of whether the victim pursues prosecution of the offender.

(c) Testing and preventative treatment for sexually transmitted diseases and pregnancy shall be eligible for payment pursuant to this section when submitted with proper documentation. The victim must make application for compensation to have other treatment related to the incident considered for payment.

(2) Payment for the following shall not be eligible for payment under this section:

(a) treatment for injuries;

(b) medication such as anti-depressants, sedatives or tranquilizers.

(c) Payment shall be submitted directly to the service provider unless payment has been made by the victim in which case the victim shall be reimbursed.

## ALASKA

***SUMMARY: There is no rape reporting requirement . Victims of sexual assault may not be required to pay for examinations necessary for collecting evidence or determining whether a sexual assault occurred. Gunshot wounds, stab wounds; certain burns and injuries likely to cause death must be reported.***

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **Alaska Stat. § 18.68.040. Sexual assault victim may not be required to pay for examination**

A law enforcement agency, health care facility, or other entity may not require a victim of sexual assault under AS 11.41.410 -- 11.41.425 who is 16 years of age or older to pay, directly or indirectly, through health insurance or any other means, for the costs of examination of the victim necessary for

- (1) collecting evidence using the sexual assault examination kit under AS 18.68.010 or otherwise; or
- (2) determining whether a sexual assault has occurred.

### REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

#### **Alaska Stat. § 08.64.369. Health care professionals to report certain injuries**

(a) A health care professional who initially treats or attends to a person with an injury described in (b) of this section shall make certain that an oral report of the injury is made promptly to the Department of Public Safety, a local law enforcement agency, or a village public safety officer. The health care professional shall make certain that a written report of an injury described in (b)(1) or (2) of this section is submitted to the Department of Public Safety within three working days after the person is treated. The report shall be on a form provided by the Department of Public Safety.

(b) The following injuries shall be reported under (a) of this section:

- (1) second or third degree burns to five percent or more of a patient's body;
- (2) a burn to a patient's upper respiratory tract or laryngeal edema due to the inhalation of super-heated air;

(3) a bullet wound, powder burn, or other injury apparently caused by the discharge of a firearm;

(4) an injury apparently caused by a knife, axe, or other sharp or pointed instrument, unless the injury was clearly accidental; and

(5) an injury that is likely to cause the death of the patient, unless the injury was clearly accidental.

(c) A person who, in good faith, makes a report under this section, or who participates in judicial proceedings related to a report under this section, is immune from any civil or criminal liability that might otherwise be incurred as a result of making such a report or participating in the judicial proceedings.

(d) In this section, "health care professional" includes an emergency medical technician certified under AS 18.08, health aide, physician, nurse, mobile intensive care paramedic, and physician assistant, but does not include a practitioner of religious healing.

**ARIZONA**

***SUMMARY: There is no mandatory reporting requirement specific to sexual assault. However, there is a mandatory reporting requirement for material injuries resulting from various illegal or unlawful acts. The county where the offense occurred is required to pay any medical expenses arising out of the need to secure evidence that a person has been sexually assaulted.***

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**STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS****A.R.S. § 13-1414. Expenses of investigation**

Any medical expenses arising out of the need to secure evidence that a person has been the victim of a dangerous crime against children as defined in section 13-604.01 or a sexual assault shall be paid by the county in which the offense occurred.

**HISTORY:** Last year in which legislation affected this section: 1985

**REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS****A.R.S. § 13-3806. Duty of physician or attendant upon treating certain wounds; classification**

A. A physician, surgeon, nurse or hospital attendant called upon to treat any person for gunshot wounds, knife wounds or other material injury which may have resulted from a fight, brawl, robbery or other illegal or unlawful act, shall immediately notify the chief of police or the city marshal, if in an incorporated city or town, or the sheriff, or the nearest police officer, of the circumstances, together with the name and description of the patient, the character of the wound and other facts which may be of assistance to the police authorities in the event the condition of the patient may be due to any illegal transaction or circumstances.

B. Any violation of the provisions of this section by a physician, surgeon, nurse or hospital attendant, is a class 3 misdemeanor.

**HISTORY:** Last year in which legislation affected this section: 1977

## ARKANSAS

***SUMMARY: Adult victims may make the decision as to whether or not a sexual assault will be reported to law enforcement. Victims do not have to pay for a forensic examination if the rape is reported to law enforcement and the examination is done within 72 hours (but the time limit may be waived for good cause). No medical facility or health care provider may require a victim to report a sexual assault in order to receive medical treatment. Note that it is mandatory to report knife and gunshot wounds.***

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **A.C.A. § 12-12-401. Definitions**

As used in this subchapter:

(1) (A) "Appropriate emergency medical-legal examinations" means health care delivered with emphasis on the collection of evidence for the purpose of prosecution.

(B) It shall include, but not be limited to, the appropriate components contained in an evidence collection kit for sexual assault examination distributed by the Forensic Biology Section of the State Crime Laboratory;

(2) "Licensed health care provider" means a person licensed in a health care field who conducts medical-legal examinations;

(3) "Medical facility" means any health care provider that is currently licensed by the Department of Health and providing emergency services; and

(4) "Victim" means any person who has been a victim of any alleged sexual assault or incest as defined by § 5-14-101 et seq. and § 5-26-202.

**HISTORY:** Acts 1983, No. 403, §§ 1-3; A.S.A. 1947, §§ 41-1820 -- 41-1822; Acts 1991, No. 612, § 1; 2001, No. 993, § 1; 2003, No. 1390, § 3.

#### **A.C.A. § 12-12-402. Procedures governing medical treatment**

(a) All medical facilities or licensed health care providers conducting medical-legal examinations in Arkansas shall adhere to the procedures set forth in this section in the event that

a person presents himself or herself or is presented for treatment as a victim of rape, attempted rape, any other type of sexual assault, or incest.

(b) (1) (A) Any adult victim presented for medical treatment shall make the decision of whether or not the incident will be reported to a law enforcement agency.

(B) No medical facility or licensed health care provider may require an adult victim to report the incident in order to receive medical treatment.

(C) (i) Evidence will be collected only with the permission of the victim.

(ii) However, permission shall not be required when the victim is unconscious, mentally incapable of consent, or intoxicated.

(2) (A) Should an adult victim wish to report the incident to a law enforcement agency, the appropriate law enforcement agencies shall be contacted by the medical facility or licensed health care provider or the victim's designee.

(B) (i) The victim shall be given a medical screening examination by a qualified medical person as provided under the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd, as in effect on January 1, 2001, if the victim arrives at the emergency department of a hospital, and the person shall be examined and treated and any injuries requiring medical attention will be treated in the standard manner.

(ii) A medical-legal examination shall be conducted and specimens shall be collected for evidence.

(C) If a law enforcement agency has been contacted and with the permission of the victim, the evidence shall be turned over to the law enforcement officers when they arrive to assume responsibility for investigation of the incident.

(c) (1) Any victim under eighteen (18) years of age shall be examined and treated, and any injuries requiring medical attention will be treated in the standard manner.

(2) A medical-legal examination shall be performed, and specimens shall be collected for evidence.

(3) The reporting medical facility or licensed health care provider shall follow the procedures set forth in § 12-12-507 regarding the reporting of injuries to victims under eighteen (18) years of age.

(4) The evidence shall be turned over to the law enforcement officers when they arrive to assume responsibility for investigation of the incident.

(d) Reimbursement for the medical-legal examinations shall be available to the medical facility or licensed health care provider pursuant to the procedures set forth in § 12-12-403.

(e) The victim shall not be transferred to another medical facility unless:

(1) (A) The victim or a parent or guardian of a victim under the age of eighteen (18) requests the transfer; or

(B) A physician, or other qualified medical personnel when a physician is not available, has signed a certification that the benefits to the patient's health would outweigh the risks to the patient's health as a result of the transfer; and

(2) The transferring medical facility or licensed health care provider provides all necessary medical records and ensures that appropriate transportation is available.

**HISTORY:** Acts 1985, No. 400, § § 1, 2; 1985, No. 838, § § 1, 2; A.S.A. 1947, § § 41-1828, 41-1829; Acts 1991, No. 612, § 2; 2001, No. 993, § 2.

**A.C.A. § 12-12-403. Examinations and treatment -- Payment**

(a) All licensed emergency departments shall provide prompt, appropriate emergency medical-legal examinations for sexual assault victims.

(b) All victims shall be exempted from the payment of expenses incurred as a result of receiving a medical-legal examination provided the following conditions are met:

(1) The assault must be reported to a law enforcement agency; and

(2) (A) The victim must receive the medical-legal examination within seventy-two (72) hours of the attack.

(B) However, the seventy-two-hour time limitation may be waived if the victim is a minor or if the Crime Victims Reparations Board finds that good cause exists for the failure to provide the exam within the required time.

(c) (1) A medical facility or licensed health care provider that performs a medical-legal examination shall submit a sexual assault reimbursement form, an itemized statement which meets the requirements of *45 C.F.R. 164.512(d)*, as it existed on January 2, 2001, directly to the board for payment.

(2) The medical facility or licensed health care provider shall not submit any remaining balance after reimbursement by the board to the victim.

(3) Acceptance of payment of the expenses of the medical-legal examination by the board shall be considered payment in full and bars any legal action for collection.

**REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS**

**A.C.A. § 12-12-602. Report of treatment required**

(a) All physicians, surgeons, hospitals, druggists, or other persons or entities that render first aid treatment shall report to the office of the sheriff of the county all cases of knife or gunshot

wounds treated by them or received in the hospital when the wounds appear to have been intentionally inflicted.

(b) If within a city of the first class, a report to the chief of police or a regular member of the police force shall be equivalent to a report to the office of the sheriff, and a proper report to the chief of police, regular member of the police force, or office of the sheriff shall be compliance with the requirements of this subchapter.

## CALIFORNIA

*Summary: Mandatory reporting is required. The local law enforcement agency who requests a forensic sexual assault examination must pay for it. No costs shall be billed to the victim when the examination is done for possible prosecution purposes. An exception exists for domestic violence victims. A claim cannot be denied solely because a domestic violence victim does not report the sexual assault.*

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### STATUTES THAT MANDATE RAPE REPORTING

#### **Cal Pen Code § 11160. Injuries required to be reported; Method of reporting; Team reports; Internal procedures**

(a) Any health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the scope of his or her employment, provides medical services for a physical condition to a patient whom he or she knows or reasonably suspects is a person described as follows, shall immediately make a report in accordance with subdivision (b):

(1) Any person suffering from any wound or other physical injury inflicted by his or her own act or inflicted by another where the injury is by means of a firearm.

(2) Any person suffering from any wound or other physical injury inflicted upon the person where the injury is the result of assaultive or abusive conduct.

(b) Any health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department shall make a report regarding persons described in subdivision (a) to a local law enforcement agency as follows:

(1) A report by telephone shall be made immediately or as soon as practically possible.

(2) A written report shall be prepared on the standard form developed in compliance with paragraph (4) of this subdivision, and Section 11160.2, and adopted by the agency or agencies designated by the Director of Finance pursuant to Section 13820, or on a form developed and adopted by another state agency that otherwise fulfills the requirements of the standard form. The completed form shall be sent to a local law enforcement agency within two working days of

receiving the information regarding the person.

(3) A local law enforcement agency shall be notified and a written report shall be prepared and sent pursuant to paragraphs (1) and (2) even if the person who suffered the wound, other injury, or assaultive or abusive conduct has expired, regardless of whether or not the wound, other injury, or assaultive or abusive conduct was a factor contributing to the death, and even if the evidence of the conduct of the perpetrator of the wound, other injury, or assaultive or abusive conduct was discovered during an autopsy.

(4) The report shall include, but shall not be limited to, the following:

(A) The name of the injured person, if known.

(B) The injured person's whereabouts.

(C) The character and extent of the person's injuries.

(D) The identity of any person the injured person alleges inflicted the wound, other injury, or assaultive or abusive conduct upon the injured person.

(c) For the purposes of this section, "injury" shall not include any psychological or physical condition brought about solely through the voluntary administration of a narcotic or restricted dangerous drug.

(d) For the purposes of this section, "assaultive or abusive conduct" shall include any of the following offenses:

(1) Murder, in violation of Section 187.

(2) Manslaughter, in violation of Section 192 or 192.5.

(3) Mayhem, in violation of Section 203.

(4) Aggravated mayhem, in violation of Section 205.

(5) Torture, in violation of Section 206.

(6) Assault with intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220.

(7) Administering controlled substances or anesthetic to aid in commission of a felony, in violation of Section 222.

- (8) Battery, in violation of Section 242.
  - (9) Sexual battery, in violation of Section 243.4.
  - (10) Incest, in violation of Section 285.
  - (11) Throwing any vitriol, corrosive acid, or caustic chemical with intent to injure or disfigure, in violation of Section 244.
  - (12) Assault with a stun gun or taser, in violation of Section 244.5.
  - (13) Assault with a deadly weapon, firearm, assault weapon, or machinegun, or by means likely to produce great bodily injury, in violation of Section 245.
  - (14) Rape, in violation of Section 261.
  - (15) Spousal rape, in violation of Section 262.
  - (16) Procuring any female to have sex with another man, in violation of Section 266, 266a, 266b, or 266c.
  - (17) Child abuse or endangerment, in violation of Section 273a or 273d.
  - (18) Abuse of spouse or cohabitant, in violation of Section 273.5.
  - (19) Sodomy, in violation of Section 286.
  - (20) Lewd and lascivious acts with a child, in violation of Section 288.
  - (21) Oral copulation, in violation of Section 288a.
  - (22) Sexual penetration, in violation of Section 289.
  - (23) Elder abuse, in violation of Section 368.
  - (24) An attempt to commit any crime specified in paragraphs (1) to (23), inclusive.
- (e) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of violence that is required to be reported pursuant to this section, and when there is an agreement among these persons to report as a team, the team may select by mutual agreement a member of the team to make a report by telephone and a

single written report, as required by subdivision (b). The written report shall be signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(f) The reporting duties under this section are individual, except as provided in subdivision (e).

(g) No supervisor or administrator shall impede or inhibit the reporting duties required under this section and no person making a report pursuant to this section shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established, except that these procedures shall not be inconsistent with this article. The internal procedures shall not require any employee required to make a report under this article to disclose his or her identity to the employer.

(h) For the purposes of this section, it is the Legislature's intent to avoid duplication of information.

### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **Penal Code §13823.95:**

No costs incurred by a qualified health care professional, hospital, or other emergency medical facility for the examination of the victim of a sexual assault, as described in the protocol developed pursuant to Section 13823.5, when the examination is performed, pursuant to Sections 13823.5 and 13823.7, for the purposes of gathering evidence for possible prosecution, shall be charged directly or indirectly to the victim of the assault. Those costs shall be treated as local costs and charged to the local governmental agency in whose jurisdiction the alleged offense was committed.

Bills for these costs shall be submitted to the law enforcement agency in the jurisdiction in which the alleged offense was committed which requests the examination.

The law enforcement agency in the jurisdiction in which the alleged offense was committed which requests the examination has the option of determining whether or not the examination will be performed in the office of a physician and surgeon.

#### **Penal Code §13823.11:**

The minimum standards for the examination and treatment of victims of sexual assault or attempted sexual assault, including child molestation and the collection and preservation of evidence therefrom include all of the following:

- (a) Law enforcement authorities shall be notified.
- (b) In conducting the physical examination, the outline indicated in the form adopted pursuant to subdivision (c) of Section 13823.5 shall be followed.
- (c) Consent for a physical examination, treatment, and collection of evidence shall be obtained.
  - (1) Consent to an examination for evidence of sexual assault shall be obtained prior to the examination of a victim of sexual assault and shall include separate written documentation of consent to each of the following:
    - (A) Examination for the presence of injuries sustained as a result of the assault.
    - (B) Examination for evidence of sexual assault and collection of physical evidence.
    - (C) Photographs of injuries.
  - (2) Consent to treatment shall be obtained in accordance with usual hospital policy.
  - (3) A victim of sexual assault shall be informed that he or she may refuse to consent to an examination for evidence of sexual assault, including the collection of physical evidence, but that a refusal is not a ground for denial of treatment of injuries and for possible pregnancy and sexually transmitted diseases, if the person wishes to obtain treatment and consents thereto.

**Govt. Code § 13956**

Notwithstanding Section 13955, a person shall not be eligible for compensation under the following conditions:

- (b)(1) An application shall be denied if the board finds that the victim or, where compensation is sought by, or on behalf of, a derivative victim, either the victim or derivative victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime. However, in determining whether cooperation has been reasonable, the board shall consider the victim's or derivative victim's age, physical condition, and psychological state, cultural or linguistic barriers, any compelling health and safety concerns, including, but not limited to, a reasonable fear of retaliation or harm that would jeopardize the well-being of the victim or the victim's family or the derivative victim or the derivative victim's family, and giving due consideration to the degree of cooperation of which the victim or derivative victim is capable in light of the presence of any of these factors.
- (2) An application for a claim based on domestic violence may not be denied solely because no police report was made by the victim. The board shall adopt guidelines that allow the board to consider and approve applications for assistance based on domestic violence relying upon evidence other than a police report to establish that a domestic violence crime has occurred. Factors evidencing that a domestic violence crime has occurred may include, but are not limited to, medical records documenting injuries consistent with allegations of domestic violence, mental health records, or the fact

## COLORADO

*Summary: Colorado has no mandatory reporting requirements specific to sexual assault, but every licensee has a duty to report "any other injury that the licensee has reason to believe involves a criminal act, including injuries resulting from domestic violence." Any direct cost associated with the collection of forensic evidence from the victim shall be paid by the referring or requesting law enforcement agency.*

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **C.R.S. 18-3-407.5. Victim evidence – forensic evidence – electronic lie detector exam without victim’s consent prohibited**

(1) Any direct cost associated with the collection of forensic evidence from the victim shall be paid by the referring or requesting law enforcement agency.

(2) No law enforcement agency may require a victim of a sexual offense to submit to a polygraph examination or any form of a mechanical or electrical lie detector examination as the sole condition for proceeding with any criminal investigation or prosecution. A law enforcement agency shall conduct any such examination only with the victim's written informed consent. Consent shall not be considered informed unless the law enforcement agency informs the victim in writing of the victim's right to refuse to submit to the examination. In addition, the law enforcement agency shall orally provide to the victim information about the potential uses of the results of such tests.

HISTORY: Source: L. 95: Entire section added, p. 948, § 3, effective July 1.

### REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

#### **C.R.S. 12-36-135. Injuries to be reported - penalty for failure to report - immunity from liability**

(1) It shall be the duty of every licensee who attends or treats a bullet wound, a gunshot wound, a powder burn, or any other injury arising from the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument that the licensee believes to have been intentionally inflicted upon a person, or any other injury that the licensee has reason to believe involves a criminal act, including injuries resulting from domestic violence, to report such injury at once to the police of the city, town, or city and county or the sheriff of the county

in which the licensee is located. Any licensee who fails to make a report as required by this section commits a class 2 petty offense, as defined by section 18-1.3-503, C.R.S., and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

(1.5) As used in subsection (1) of this section, unless the context otherwise requires:

(a) "Domestic violence" means an act of violence upon a person with whom the actor is or has been involved in an intimate relationship. Domestic violence also includes any other crime against a person or any municipal ordinance violation against a person when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.

## CONNECTICUT

*Summary: There is no mandatory reporting in Connecticut unless the rape victim suffered a wound from a firearm as well. No costs of a sexual assault forensic evidence collection examination shall be billed to a victim when the examination is for the purpose of gathering evidence as prescribed in the Connecticut Technical Guidelines for Health Care Response to Victims of Sexual Assault Protocol.*

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

**Conn. Gen. Stat. § 19a-112a. Commission on the Standardization of the Collection of Evidence in Sexual Assault Investigations. Protocol. Sexual assault evidence collection kit. Preservation of evidence. Costs. Training and sexual assault examiner programs.**

(a) There is created a Commission on the Standardization of the Collection of Evidence in Sexual Assault Investigations composed of fourteen members as follows: The Chief State's Attorney or a designee; the executive director of the Permanent Commission on the Status of Women or a designee; the Commissioner of Children and Families or a designee; one member from the Division of State Police and one member from the Division of Scientific Services appointed by the Commissioner of Public Safety; one member from Connecticut Sexual Assault Crisis Services, Inc. appointed by its board of directors; one member from the Connecticut Hospital Association appointed by the president of the association; one emergency physician appointed by the president of the Connecticut College of Emergency Physicians; one obstetrician-gynecologist and one pediatrician appointed by the president of the Connecticut State Medical Society; one nurse appointed by the president of the Connecticut Nurses' Association; one emergency nurse appointed by the president of the Emergency Nurses' Association of Connecticut; and one police chief appointed by the president of the Connecticut Police Chiefs Association. The Chief State's Attorney or a designee shall be chairman of the commission. The commission shall be within the Division of Criminal Justice for administrative purposes only.

(b) (1) For the purposes of this section, "protocol" means the state of Connecticut Technical Guidelines for Health Care Response to Victims of Sexual Assault, including the Interim Sexual Assault Toxicology Screen Protocol, as revised from time to time and as incorporated in regulations adopted in accordance with subdivision (2) of this subsection, pertaining to the collection of evidence in any sexual assault investigation.

(2) The commission shall recommend the protocol to the Chief State's Attorney for adoption as regulations in accordance with the provisions of chapter 54. The commission shall annually

review the protocol and may annually recommend changes to the protocol for adoption as regulations.

(c) The commission shall design a sexual assault evidence collection kit and may annually recommend changes in the kit to the Chief State's Attorney. Each kit shall include instructions on the proper use of the kit, standardized reporting forms, standardized tests which shall be performed if the victim so consents and standardized receptacles for the collection and preservation of evidence. The commission shall provide the kits to all health care facilities in the state at which evidence collection examinations are performed at no cost to such health care facilities.

(d) Each health care facility in the state which provides for the collection of sexual assault evidence shall follow the protocol as described in subsection (b) of this section and, with the consent of the victim, shall collect sexual assault evidence. The health care facility shall contact a police department which shall transfer evidence collected pursuant to subsection (b) of this section, in a manner that maintains the integrity of the evidence, to the Division of Scientific Services within the Department of Public Safety or the Federal Bureau of Investigation laboratory. The agency that receives such evidence shall hold that evidence for sixty days after such collection, except that, if the victim reports the sexual assault to the police, the evidence shall be analyzed upon request of the police department that transferred the evidence to such agency and held by the agency or police department until the conclusion of any criminal proceedings.

(e) (1) No costs incurred by a health care facility for the examination of a victim of sexual assault, when such examination is performed for the purpose of gathering evidence as prescribed in the protocol, including the costs of testing for pregnancy and sexually transmitted diseases and the costs of prophylactic treatment as provided in the protocol, shall be charged directly or indirectly to such victim. Any such costs shall be charged to the Division of Criminal Justice.

(2) No costs incurred by a health care facility for any toxicology screening of a victim of sexual assault, when such screening is performed as prescribed in the protocol, shall be charged directly or indirectly to such victim. Any such costs shall be charged to the Division of Scientific Services within the Department of Public Safety.

(f) The commission shall advise the Chief State's Attorney on the establishment of a mandatory training program for health care facility staff regarding the implementation of the regulations, the use of the evidence collection kit and procedures for handling evidence.

(g) The commission shall advise the Chief State's Attorney not later than July 1, 1997, on the development of a sexual assault examiner program and annually thereafter on the implementation and effectiveness of such program.

**HISTORY:** (P.A. 88-210, S. 1, 3; P.A. 92-151, S. 1, 2; P.A. 93-91, S. 1, 2; 93-340, S. 6, 19; 93-381, S. 9, 39; P.A. 95-257, S. 12, 21, 58; P.A. 97-257, S. 2, 13; P.A. 98-5; 98-24; P.A. 99-218, S. 7, 16; June 30 Sp. Sess. P.A. 03-6, S. 162, 163.)

**REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS****Conn. Gen. Stat. § 19a-490f. Requirements for reports of treatment of wounds from firearms.**

Each hospital, outpatient surgical facility and outpatient clinic shall report or cause a report to be made to the local police department or the state police of each person treated for a bullet wound, gunshot wound or any injury arising from the discharge of a firearm. Such report shall be made as soon as practicable after the treatment is rendered and shall contain the name and address of the injured person, if known, the nature and extent of the injury and the circumstances under which the treatment was rendered.

**DELAWARE**

*Summary: There is no mandatory reporting of sexual assault. The cost of a forensic medical examination done for the purpose of gathering evidence that can be used in the prosecution of a sexual offense may be paid from the Victim Compensation Fund. Hospitals and health care professionals may also seek reimbursement from the victim's medical insurance. It is mandatory to report knife and gunshot wounds.*

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**STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS****11 Del. C. § 9019 Payment for forensic medical examinations for victims of sexual offense**

(a) The cost of a forensic medical examination done for the purpose of gathering evidence that can be used in the prosecution of a sexual offense may be paid from the Victim Compensation Fund.

(b) "Forensic medical examination" shall be defined as medical diagnostic procedures examining for physical trauma, and determining penetration, force or lack of consent. The cost of the examination shall include collecting all evidence as called for in the sexual offense evidence collection kits and may include any of the following, if done as part of the forensic medical examination:

(1) Physician's fees for the collection of the patient history, physical, collection of specimens and treatment for the prevention of venereal disease, including 1 return follow-up visit;

(2) Emergency department expenses, including emergency room fees and cost of pelvic tray; and

(3) Laboratory expenses for wet mount for sperm, swabs for acid phosphates and ABH antigen; blood typing; serology for syphilis and Hepatitis B; cultures for gonorrhea, chlamydia, trichomonas and other sexually transmitted diseases; pregnancy testing; urinalysis; and any other laboratory test needed to collect evidence that could be used in the prosecution of the offense.

(c) Hospitals and health care professions shall provide forensic medical examinations free of charge to the victims of sexual offenses. Any hospital or health care professional performing a forensic medical examination shall seek reimbursement for the examination from the patient's insurance carrier, including Medicaid and Medicare, if available. If insurance is unavailable, or does not cover the full costs of the forensic medical examination, the service provider may seek reimbursement from the Compensation Fund. The Board shall authorize the repayment for

reasonable expenses incurred during the forensic medical examination. Such reimbursement shall not exceed a maximum amount to be determined by the Board. If the hospital or health care professional has recovered from insurance, the Board shall only provide compensation sufficient to total the maximum amount provided for in the Board's rules and regulations.

(d) The victim of the sexual offense shall not pay any out-of-pocket costs associated with the forensic medical examination and shall not be required to file an application with the Board. Notwithstanding other language in this chapter, all forensic medical examinations of victims of a sexual offense not covered by insurance shall be paid for through the Victim Compensation Fund and such payment shall be considered full compensation to the hospital or health care professional providing such services.

(e) In addition to, and at the same time as, any other fine or penalty assessed on any criminal defendant, all defendants convicted of a sexual offense as defined in § 761 of this title shall be assessed an additional fine that shall be used to reimburse the Victim Compensation Fund for forensic medical examination payments. All defendants convicted of sexual offenses shall pay \$ 50 for each misdemeanor level count for which they are convicted and \$ 100 for each felony level count for which they are convicted. All fines paid in accordance with this section shall be deposited into the Victim Compensation Fund.

(f) Nothing in this section shall preclude victims from applying to the Board for other costs incurred.

HISTORY: 70 Del. Laws, c. 40, § 1.

### REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

#### **24 Del. C. § 1762. Reports of treatment of certain wounds, injuries, poisonings, or other conditions; failure to report; penalty**

(a) Every person certified to practice medicine who attends to or treats a stab wound; poisoning by other than accidental means; or a bullet wound, gunshot wound, powder burn, or other injury or condition arising from or caused by the discharge of a gun, pistol, or other firearm, or when such injury or condition is treated in a hospital, sanitarium, or other institution, the person, manager, superintendent, or other individual in charge shall report the injury or condition as soon as possible to the appropriate police authority where the attending or treating person was located at the time of treatment or where the hospital, sanitarium, or institution is located. This section does not apply to wounds, burns, poisonings, or injuries or conditions received by a member of the armed forces of the United States or the State while engaged in the actual performance of duty. A person who fails to make a report required by this section shall be fined not less than \$

100 nor more than \$ 2,500.

(b) A person certified to practice medicine or other individual who makes a report pursuant to this section is immune from liability for the report, provided that the person or other individual acted in good faith and without gross or wanton negligence.

**HISTORY:** 24 Del. C. 1953, § 1762; 50 Del. Laws, c. 369, § 1; 65 Del. Laws, c. 123, § 1; 75 Del. Laws, c. 141, § 1.

## DISTRICT OF COLUMBIA

***Summary: Reporting is only mandatory when injuries are inflicted by a firearm or dangerous weapon. A victim of sexual assault is eligible to receive compensation when the victim seeks a sexual assault examination from a medical treatment facility.***

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **D.C. Code § 4-506. Eligibility for compensation [Formerly § 3-426]**

(a) A victim or secondary victim is eligible to receive compensation under this chapter if he or she:

- (1) Suffered personal injury as a result of a crime;
- (2) Filed a claim under this chapter within 1 year after the crime occurred or 1 year after learning of the Program with an adequate showing that the delay in learning of the Program was reasonable; and
- (3) Reported the crime to a law enforcement office within 7 days of its occurrence. If the crime cannot be reasonably reported within that time period, the crime must be reported within 7 days from the time a report can reasonably be made.

(b) The offender shall not be unjustly enriched by an award of compensation to the claimant, except that this requirement may be waived in cases involving extraordinary circumstances where the interests of justice so require.

(c) Notwithstanding subsection (a)(3) of this section, a victim who has been sexually abused or subjected to unlawful sexual conduct, domestic violence, or cruelty to children and who does not report the crime to the local police department, may:

- (1) In the case of domestic violence victims, satisfy the reporting requirement by seeking a civil protection order from the Corporation Counsel of the District of Columbia;
- (2) In the case of sexual assault victims, satisfy the reporting requirement by seeking a sexual assault examination from a medical treatment facility; and
- (3) In the case of a victim of cruelty to children, satisfy the reporting requirement by the filing of a neglect petition by the District of Columbia in the Superior Court.

(d) The time limit requirements of this section may be waived for good cause shown, including compelling health or safety concerns.

**HISTORY:** 1981 Ed., § 3-426; Apr. 9, 1997, D.C. Law 11-243, § 7, 44 DCR 1142; Oct. 19, 2000, D.C. Law 13-172, § 202(b), 47 DCR 6308.

## REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

### **D.C. Code § 7-2601. Reports by physicians and institutions required [Formerly § 2-1361]**

Any physician in the District of Columbia, including persons licensed under Chapter 12 of Title 3, having reasonable cause to believe that a person brought to him or coming before him for examination, care, or treatment has suffered injury caused by a firearm, whether self-inflicted, accidental, or occurring during the commission of a crime, or has suffered injury caused by any dangerous weapon in the commission of a crime, shall report or cause reports to be made in accordance with this chapter; provided, that when a physician in the performance of service as a member of the staff of a hospital or similar institution attends any person so injured, he shall notify the person in charge of the hospital or institution or his designated agent who shall report or cause reports to be made in accordance with this chapter.

### **D.C. Code § 7-2602 Nature and contents of reports [Formerly § 2-1362]**

An oral report shall be made immediately by telephone or otherwise, and followed as soon thereafter as possible by a report in writing, to the Metropolitan Police Department of the District of Columbia. Such reports shall contain, if readily available, the name, address, and age of the injured person, and shall also contain the nature and extent of the person's injuries, and any other information which the physician or other person required to make the report believes might be helpful in establishing the cause of the injuries and the identity of the person who caused the injuries.

**FLORIDA**

*Summary: There is not a mandatory rape reporting requirement. However, there is a requirement to report gunshot wounds and life-threatening injuries indicating an act of violence. The forensic sexual assault examination is paid for when the rape is reported to law enforcement.*

**STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS**

**Fla. Admin. Code Ann. r. 2A-3.002. Application and Payment Procedures.**

Application and payment procedures for sexual assault examinations are provided on the form entitled "Sexual Battery Claim Form," DVS-201, (Rev. 8/02), effective 3-17-03, which is incorporated in this rule by reference.

Specific Authority 960.045(1) FS. Law Implemented 960.28 FS. History--New 11-1-92, Amended 9-13-94, 9-26-95, 6-19-96, 9-24-97, 2-3-00, 3-17-03.

2 FL ADC 2A-3.002

**960.28. Payment for victims' initial forensic physical examinations**

(1) A medical provider who performs an initial forensic physical examination may not bill a victim or the victim's parent or guardian if the victim is a minor directly or indirectly for that examination.

(2) The Crime Victims' Services Office of the department shall pay for medical expenses connected with an initial forensic physical examination of a victim who reports a violation of chapter 794 or chapter 800 to a law enforcement officer. Such payment shall be made regardless of whether or not the victim is covered by health or disability insurance. The payment shall be made only out of moneys allocated to the Crime Victims' Services Office for the purposes of this section, and the payment may not exceed \$250 with respect to any violation. Payment may not be made for an initial forensic physical examination unless the law enforcement officer certifies in writing that the initial forensic physical examination is needed to aid in the investigation of an alleged sexual offense and that the claimant is the alleged victim of the offense. The department shall develop and maintain separate protocols for the initial forensic physical examination of

adults and children. Payment under this section is limited to medical expenses connected with the initial forensic physical examination, and payment may be made to a medical provider using an examiner qualified under part I of chapter 464, excluding s. 464.003(5); chapter 458; or chapter 459. Payment made to the medical provider by the department shall be considered by the provider as payment in full for the initial forensic physical examination associated with the collection of evidence. The victim may not be required to pay, directly or indirectly, the cost of an initial forensic physical examination performed in accordance with this section.

(3) The department may allow, deny, controvert, or litigate claims made against it under this section.

(4) Information received or maintained by the department identifying an alleged victim who seeks payment of medical expenses under this section is confidential and exempt from the provisions of s. 119.07(1).

(5) A defendant or juvenile offender who pleads guilty or nolo contendere to, or is convicted of or adjudicated delinquent for, a violation of chapter 794 or chapter 800 shall be ordered by the court to make restitution to the Crimes Compensation Trust Fund in an amount equal to the compensation paid to the medical provider by the Crime Victims' Services Office for the cost of the initial forensic physical examination. The order may be enforced by the department in the same manner as a judgment in a civil action.

### REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

#### **Fla. Stat. § 790.24. Report of medical treatment of certain wounds; penalty for failure to report**

Any physician, nurse, or employee thereof and any employee of a hospital, sanitarium, clinic, or nursing home knowingly treating any person suffering from a gunshot wound or life-threatening injury indicating an act of violence, or receiving a request for such treatment, shall report the same immediately to the sheriff's department of the county in which said treatment is administered or request therefore received. This section does not affect any requirement that a person has to report abuse pursuant to chapter 39 or chapter 415. Any such person willfully failing to report such treatment or request therefore is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

## GEORGIA

***Summary: There is not a specific rape reporting requirement; however, hospital administrators are required to make a report of non-accidental injuries. When evidence relating to an allegation of rape is collected in the course of a medical examination of the person who is the victim of the alleged crime, the law enforcement agency investigating the alleged crime shall be responsible for the cost of the medical examination to the extent that expense is incurred for the limited purpose of collecting evidence.***

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **O.C.G.A. § 16-6-1. Rape**

- (a) A person commits the offense of rape when he has carnal knowledge of:
- (1) A female forcibly and against her will; or
  - (2) A female who is less than ten years of age.

Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ. The fact that the person allegedly raped is the wife of the defendant shall not be a defense to a charge of rape.

(b) A person convicted of the offense of rape shall be punished by death, by imprisonment for life without parole, by imprisonment for life, or by imprisonment for not less than ten nor more than 20 years. Any person convicted under this Code section shall, in addition, be subject to the sentencing and punishment provisions of *Code Sections 17-10-6.1* and *17-10-7*.

(c) When evidence relating to an allegation of rape is collected in the course of a medical examination of the person who is the victim of the alleged crime, the law enforcement agency investigating the alleged crime shall be responsible for the cost of the medical examination to the extent that expense is incurred for the limited purpose of collecting evidence.

### REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

#### **O.C.G.A. § 31-7-9 Reports by physicians and other personnel of nonaccidental injuries to patients; immunity from liability**

- (a) As used in this Code section, the term "medical facility" includes, without being limited to,

an ambulatory surgical treatment center defined in subparagraph (D) of paragraph (1) of Code Section 31-7-1.

(b) Any:

(1) Physician, including any doctor of medicine licensed to practice under the laws of this state;

(2) Licensed registered nurse employed by a medical facility;

(3) Security personnel employed by a medical facility; or

(4) Other personnel employed by a medical facility whose employment duties involve the care and treatment of patients therein

having cause to believe that a patient has had physical injury or injuries inflicted upon him other than by accidental means shall report or cause reports to be made in accordance with this Code section.

(c) An oral report shall be made immediately by telephone or otherwise and shall be followed by a report in writing, if requested, to the person in charge of the medical facility or his designated delegate. The person in charge of the medical facility or his designated delegate shall then notify the local law enforcement agency having primary jurisdiction in the area in which the medical facility is located of the contents of the report. The report shall contain the name and address of the patient, the nature and extent of the patient's injuries, and any other information that the reporting person believes might be helpful in establishing the cause of the injuries and the identity of the perpetrator.

(d) Any person or persons participating in the making of a report or causing a report to be made to the appropriate police authority pursuant to this Code section or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil liability that might otherwise be incurred or imposed, providing such participation pursuant to this Code section shall be in good faith.

## HAWAII

*Summary: There is not a mandatory reporting requirement for sexual assault. Examinations shall be paid for from funds appropriated for the expenses of examination administration. It is mandatory to report stab wounds, gunshot wounds and any injury that would seriously maim, produce death, or has rendered the injured person unconscious, caused by the use of violence or sustained in a suspicious or unusual manner.*

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **HRS § 351-15 Medical examination**

The commission may appoint an impartial licensed physician or licensed psychologist to examine any person making application under this chapter, and the fees for the examination shall be paid from funds appropriated for expenses of administration.

**HISTORY:** L 1967, c 226, pt of § 1; HRS § 351-15; am L 1988, c 305, § 1; am L 1998, c 240, § 5

### REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

#### **HRS § 453-14. Duty of physician, surgeon, hospital, clinic, etc., to report wounds.**

(a) Every physician and surgeon attending or treating a case of knife wound, bullet wound, gunshot wound, powder burn, or any injury that would seriously maim, produce death, or has rendered the injured person unconscious, caused by the use of violence or sustained in a suspicious or unusual manner or in motor vehicle collisions resulting in serious injury or death, or, whenever the case is treated in a hospital, clinic, or other institution, the manager, superintendent, or person in charge thereof, shall report the case or provide requested information to the chief of police of the county within which the person was attended or treated, giving the name of the injured person, description of the nature, type, and extent of the injury, together with other pertinent information that may be of use to the chief of police. As used herein, the term "chief of police" means the chief of police of each county and any of the chief's authorized subordinates.

(b) This section shall not apply to wounds, burns, or injuries received by a member of the armed forces of the United States or of the State while engaged in the actual performance of duty.

(c) Any person who fails to make the report called for herein within twenty-four hours after the attendance or treatment shall be fined not less than \$50 nor more than \$500.

**HISTORY:** L 1933-34, c 27, § § 1, 2; RL 1935, § 1202; am L 1943, c 23, § 1; RL 1945, § 2513; am L 1955, c 110, § 1; RL 1955, § 64-13; HRS § 453-14; am L 1983, c 92, § 1(10); am L 2005, c 39, § 1

## IDAHO

*Summary: There is no mandatory reporting requirement; however, it is mandatory to report injuries which indicate that a person may be the victim of a criminal offense. It is also mandatory to report gunshot wounds. When the victim of any crime is directed or authorized by a law enforcement agency to obtain a medical examination for the purpose of procuring evidence for use by a law enforcement agency in the investigation or prosecution of the crime, the expense incurred shall be paid for from the crime victims compensation account.*

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **Idaho Code § 19-5303 Cost of medical exams to be paid by law enforcement agency**

When the victim of any crime is directed or authorized by a law enforcement agency to obtain a medical examination for the purpose of procuring evidence for use by a law enforcement agency in the investigation or prosecution of the crime, the expense incurred shall be paid by the law enforcement agency. Provided however, the cost of forensic and/or medical examinations of alleged victims of sexual assault shall be paid for from the crime victims compensation account, as established by section 72-1009, Idaho Code. The provisions of this section shall not be construed to require a law enforcement agency to bear the expense of any medical treatment of the victim.

HISTORY: I.C., § [19-5303] 19-5302, as added by 1984, ch. 191, § 1, p. 440; am. and redesign. 1985, ch. 122, § 7, p. 296; am. 2001, ch. 144, § 1, p. 512.

#### **Idaho Code § 72-1019. Compensation benefits**

(1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the time the claimant seeks such weekly benefits, the claimant, as a result of such injury, must have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount is sixty-six and two-thirds percent (66 2/3%) of the wages received at the time of the criminally injurious conduct, subject to a maximum of one hundred seventy-five dollars (\$ 175). Weekly compensation payments shall be made at the end of each two (2) week period. No weekly compensation payments may be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for one (1) week, weekly compensation payments shall be paid from the date the wage loss began. Weekly compensation

payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.

(2) The commission may order payment of reasonable expenses actually incurred by the claimant for reasonable services by a physician or surgeon, reasonable hospital services and medicines, mental health counseling and care, and such other treatment as may be approved by the commission for the injuries suffered due to criminally injurious conduct. Payment for the costs of forensic and medical examinations of alleged victims of sexual assault performed for the purposes of gathering evidence for possible prosecution, after collections from any third party who has liability, shall be made by the commission. The commission shall establish a procedure for summary processing of such claims.

(3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive aggregate weekly benefits amounting to sixty-six and two-thirds percent (66 2/3%) of the wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of one hundred seventy-five dollars (\$ 175) per week. Weekly compensation payments shall be made at the end of each two (2) week period.

(b) Benefits under subsection (3)(a) of this section shall be paid to the spouse for the benefit of the spouse and other dependents unless the commission determines that other payment arrangements should be made. If a spouse dies or remarries, benefits under subsection (3)(a) shall cease to be paid to the spouse but shall continue to be paid to the other dependents so long as their dependent status continues.

(4) Reasonable funeral and burial or cremation expenses of the victim, together with actual expenses of transportation of the victim's body, shall be paid in an amount not exceeding five thousand dollars (\$ 5,000) if all other collateral sources have properly paid such expenses but have not covered all such expenses.

(5) (a) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death, because of injuries suffered due to an act or acts of criminally injurious conduct involving the same offender and occurring within a six (6) month period, may not exceed twenty-five thousand dollars (\$ 25,000) in the aggregate.

(b) The limitation of subsection (5)(a) of this section is subject to the further limitation that payments for mental health treatment received as a result of the victim's injury may not exceed two thousand five hundred dollars (\$ 2,500) unless the industrial commission finds extenuating circumstances pursuant to regulation of the industrial commission.

(6) Compensation benefits are not payable for pain and suffering or property damage.

(7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result

of such injury has no reasonable prospect of being regularly employed in the normal labor market, who was employable but was not employed at the time of such injury, may in the discretion of the commission be awarded weekly compensation benefits in an amount determined by the commission not to exceed one hundred fifty dollars (\$ 150) per week. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market or for a shorter period as determined by the commission. The claimant shall be awarded benefits as provided in subsection (2) of this section.

(b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was employable but not employed at the time of death, may, in the discretion of the commission, be awarded, in an aggregate amount payable to all dependents, a sum not to exceed one hundred fifty dollars (\$ 150) per week which shall be payable in the manner and for the period provided by subsection (3)(b) of this section or for such shorter period as determined by the commission. The claimant shall be awarded benefits as provided in subsection (4) of this section.

(c) Compensation payable to a victim or a victim's dependents under this subsection may not exceed twenty thousand dollars (\$ 20,000), and the limitations of subsection (6) of this section apply to compensation under this subsection (7).

(8) Amounts payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every two (2) weeks.

(9) (a) Subject to the limitations in subsections (9)(b) and (9)(c) of this section, the spouse, parent, grandparent, child, grandchild, brother or sister of a victim who is killed, kidnapped, sexually assaulted or subjected to domestic violence or child injury is entitled to reimbursement for mental health treatment received as a result of such criminally injurious conduct.

(b) Total payments made under subsection (9)(a) of this section, may not exceed five hundred dollars (\$ 500) for each person or one thousand five hundred dollars (\$ 1,500) for a family.

(c) With regard to claims filed pursuant to this section, in order for family members of victims of crime to be entitled to benefits, the victim of the crime must also have been awarded benefits for the crime itself.

(10) A claimant or a spouse, parent, child or sibling of a claimant or victim may be reimbursed for his or her expenses for necessary travel incurred in connection with obtaining benefits covered pursuant to this chapter and in accordance with rules of the commission.

**HISTORY:** I.C., § 72-1019, as added by 1986, ch. 337, § 1, p. 824; am. 1991, ch. 246, § 1, p. 601; am. 1993, ch. 278, § 3, p. 940; am. 2001, ch. 144, § 2, p. 512; am. 2002, ch. 136, § 7, p.

371; am. 2005, ch. 109, § 1, p. 359.

## REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

### **Idaho Code § 39-1390. Reports to law enforcement agencies of certain types of injuries**

(1) As soon as treatment permits, any person operating a hospital or other medical treatment facility, or any physician, resident on a hospital staff, intern, physician assistant, nurse or emergency medical technician shall notify the local law enforcement agency of that jurisdiction upon the treatment of or request for treatment of a person when the reporting person has reason to believe that the person treated or requesting treatment has received:

- (a) Any injury inflicted by means of a firearm; or
- (b) Any injury indicating that the person may be a victim of a criminal offense.

(2) The report provided to the law enforcement agency pursuant to subsection (1) of this section shall include the name and address of the injured person, the character and extent of the person's injuries, and the medical basis for making the report.

(3) Any person operating a medical facility, or any physician, resident on a hospital staff, intern, physician assistant, nurse or emergency medical technician shall be held harmless from any civil liability for his reasonable compliance with the provisions of this section.

HISTORY: I.C., § 39-1390, as added by 1991, ch. 167, § 1, p. 407; am. 1995, ch. 169, § 1, p. 651.

## ILLINOIS

*Summary: There is no specific requirement to report a rape; however, there is a requirement to report injuries sustained as a victim as a result of the commission of a criminal offense.*

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### REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

#### **§ 20 ILCS 2630/3.2. [Duty to report injuries resulting from discharge of firearm or sustained in commission of or as victim of criminal offense] <sup>7</sup>**

Sec. 3.2. It is the duty of any person conducting or operating a medical facility, or any physician or nurse as soon as treatment permits to notify the local law enforcement agency of that jurisdiction upon the application for treatment of a person who is not accompanied by a law enforcement officer, when it reasonably appears that the person requesting treatment has received:

- (1) any injury resulting from the discharge of a firearm; or
- (2) any injury sustained in the commission of or as a victim of a criminal offense.

Any hospital, physician or nurse shall be forever held harmless from any civil liability for their reasonable compliance with the provisions of this Section.

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<sup>7</sup> [Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 38, para. 206-3.2]

## INDIANA

*Summary: There is no specific requirement to report rape; however, there is a duty to report injuries from guns, firearms, knives, ice picks, and other sharp pointed instruments, as well as certain burns and injuries caused by the manufacture or use of destructive devices. Note, however, in order for compensation to be awarded for a forensic sexual assault examination, a victim must make a report within 96 hours and the victim must cooperate to the fullest extent possible to solve the crime.*

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **Burns Ind. Code Ann. § 16-21-8-5. Conditions for compensation or reimbursement**

(a) The division may not award compensation or reimbursement under this chapter unless the following conditions are met:

(1) If the victim is at least eighteen (18) years of age:

(A) the sex crime must be reported to a law enforcement officer within ninety-six (96) hours after the crime's occurrence; and

(B) the victim must cooperate to the fullest extent possible with law enforcement personnel to solve the crime.

(2) If the victim is less than eighteen (18) years of age, a report of the sex crime must be made to child protective services or a law enforcement officer. The division may not deny an application for reimbursement under this subdivision based on the victim reporting the sex crime more than ninety-six (96) hours after the crime's occurrence.

(b) If the division finds a compelling reason for failure to report to or cooperate with law enforcement officials and justice requires, the division may suspend the requirements of this section.

(c) A claim filed for services provided at a time before the provision of the emergency services for which an application for reimbursement is filed is not covered under this chapter.

**HISTORY:** P.L.2-1993, § 4; P.L.47-1993, § 9; P.L.90-2005, § 7.

**EFFECTIVE DATES.** P.L.90-2005, § 9, declared an emergency. Approved April 26, 2005.

#### **Burns Ind. Code Ann. § 5-2-6.1-39. Reimbursement for hospital services**

(a) When a hospital acting under IC 16-21-8 provides emergency services to an alleged sex crime victim, the hospital shall furnish the services without charge. The victim services division of the Indiana criminal justice institute shall reimburse a hospital for its costs in providing the services and shall adopt rules and procedures to provide for reimbursement. A hospital may not charge the victim for services required under this chapter, despite delays in reimbursement from the victim services division of the Indiana criminal justice institute.

(b) Costs incurred by a hospital or other emergency medical facility for the examination of the victim of a sex crime (under IC 35-42-4) not covered under IC 16-21-8 or incest (under IC 35-46-1-3), if the examination is performed for the purposes of gathering evidence for possible prosecution, may not be charged to the victim of the crime. The costs shall be treated as local costs and charged to the appropriate local governmental agency as follows:

(1) If the treatment or services are provided at a county or city hospital, or hospital district facility, the county shall pay the expenses.

(2) If the treatment or services are provided at a private hospital, the expenses are paid by the county in whose jurisdiction the alleged crime was committed.

(c) When a licensed medical service provider not covered by subsection (a) or (b) elects to provide emergency services to an alleged victim of one (1) or more of the sex crimes listed in IC 16-21-8-1(b), the medical service provider shall furnish the services without charge. The victim services division of the Indiana criminal justice institute shall reimburse a medical service provider for costs in providing the services listed in subsection (d) if:

(1) the victim or claimant has:

(A) reported the sex crime to a law enforcement officer within forty-eight (48) hours after the crime occurred; and

(B) has cooperated fully with law enforcement personnel to solve the crime; or

(2) the victim services division of the Indiana criminal justice institute finds a compelling reason for failure of the victim or claimant to report to or cooperate with law enforcement officials.

(d) If the requirements of subsection (c) are met, the victim services division of the Indiana criminal justice institute shall reimburse a medical service provider for costs in providing the following services:

(1) Appropriate medical care.

(2) Appropriate procedures for acquiring adequate evidence that may be used in a criminal proceeding against a person accused of the sex crime.

(3) Records of the results of examinations and tests made by the hospital.

(4) Appropriate counseling for the victim.

A medical service provider may not charge the victim for services because the victim services division of the Indiana criminal justice institute delays in reimbursing the provider.

(e) Costs incurred by a licensed medical service provider for the examination of the victim of a sex crime (under IC 35-42-4) not covered under IC 16-21-8 or incest (under IC-25-46-1-3) may not be charged to the victim of the crime if the examination is performed for the purposes of gathering evidence for possible prosecution. The costs are local costs to be paid by the county in which the alleged crime was committed.

### REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

#### **Burns Ind. Code Ann. § 35-47-7-1. Report of injuries from gun, firearm, knife, ice pick or other sharp or pointed instrument**

Every case of a bullet wound, gunshot wound, powder burn, or any other injury arising from or caused by the discharge of a firearm, and every case of a wound which is likely to or may result in death and is actually or apparently inflicted by a knife, ice pick, or other sharp or pointed instrument, shall be reported at once to the law enforcement authorities of the county, city, or town in which the person reporting is located by either the physician attending or treating the case, or by the manager, superintendent, or other person in charge if the case is treated in a hospital, clinic, sanitarium, or other facility or institution. A person who violates this section commits a Class A misdemeanor.

**HISTORY:** IC 35-47-7-1, as added by P.L.311-1983, § 32.

#### **Burns Ind. Code Ann. § 35-47-7-3. Burn injury reports**

(a) As used in this section, "burn" includes chemical burns, flash burns, and thermal burns.

(b) If a person is treated for:

(1) A second or third degree burn to ten percent (10%) or more of the body;

(2) Any burn to the upper respiratory tract or laryngeal edema due to the inhalation of superheated air; or

- (3) A burn that results in serious bodily injury;

the physician treating the person, or the hospital administrator or the hospital administrator's designee of the hospital or ambulatory outpatient surgical center (if the person is treated in a hospital or outpatient surgical center), shall report the case to the state fire marshal within seventy-two (72) hours. This report may be made orally or in writing and shall be considered confidential information.

(c) If a person is treated for a second or third degree burn to less than ten percent (10%) of the body, the attending physician may report the case to the state fire marshal under subsection (b).

(d) The state fire marshal shall ascertain the following when a report is made under this chapter:

- (1) Victim's name, address, and date of birth.
- (2) Address where burn injury occurred.
- (3) Date and time of injury.
- (4) Degree of burns and percent of body burned.
- (5) Area of body burned.
- (6) Injury severity.
- (7) Apparent cause of burn injury.
- (8) Name and address of reporting facility.
- (9) Attending physician.

**HISTORY:** P.L.328-1987, § 1.

**Burns Ind. Code Ann. § 35-47-7-5. Reporting of injuries caused by manufacture or use of destructive devices**

The:

- (1) physician who treats a person; or
- (2) administrator or the administrator's designee of the hospital or outpatient surgical center where a person was treated;

who has reason to believe that the physician or hospital is treating a person for an injury that was inflicted while the person was making or using a destructive device shall report the case to a local law enforcement agency not more than seventy-two (72) hours after the person is treated. The report may be made orally or in writing.

**HISTORY:** P.L.123-2002, § 46.

**Burns Ind. Code Ann. § 35-47.5-4-7. Reporting of injuries related to manufacture of destructive devices**

A physician or hospital that has reason to believe that the physician or hospital is treating a person for an injury inflicted while the person was making or using a destructive device shall report the injury to a local law enforcement agency under IC 35-47-7-5.

**HISTORY:** P.L.123-2002, § 50.

**IOWA**

*Summary: Iowa does not have a specific requirement that rape cases be reported to law enforcement. However, Iowa law requires medical providers treating gunshot, stab wound or other "serious injuries" which appear to have been received in connection with the commission of a criminal offense to report the injuries to law enforcement. The cost of the medical examination done for the purpose of gathering evidence shall be paid from the fund.*

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**STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS****Iowa Code § 915.41. Medical examination costs.**

The cost of a medical examination of a victim for the purpose of gathering evidence and the cost of treatment of a victim for the purpose of preventing venereal disease shall be paid from the fund established in section 915.94.

**HISTORY:** 98 Acts, ch 1090, § 34, 84; 99 Acts, ch 114, § 48

**61 IAC 9.80(915) Administration of sexual abuse examination payment.**

The crime victim assistance program of the department of justice shall administer the sexual abuse examination program as provided in Iowa Code section 915.41. That section states in part:

"The cost of a medical examination for the purpose of gathering evidence and the cost of treatment for the purpose of preventing sexually transmitted disease shall be borne by the department of justice."

Requests for payment should be addressed to: Sexual Abuse Examination Payments, Crime Victim Assistance Division, Lucas State Office Building, Ground Floor, 321 East 12th Street, Des Moines, Iowa 50319; telephone (515)281-5044 or 1-800-373-5044.

**61 IAC 9.81(915) Definitions.**

"Administration" means administrator of the crime victim assistance program established in the department of justice.

"Board" means crime victim assistance board.

"Department" means the Iowa department of justice.

"Eligible claimant" means a medical provider that provides a sexual abuse examination to a sexual assault victim. The following are eligible to file a claim with the crime victim assistance

program in the event that they have made payment to a medical provider for the costs of a sexual abuse examination:

1. A victim of sexual abuse.
2. A person responsible for the maintenance of a sexual abuse victim.
3. A dependent of a victim who has died as a result of injuries sustained in a sexual assault.
4. The guardian of a sexual abuse victim.

"Reasonable charges" means those ordinarily charged by the provider of the service to the general public for services of a similar nature.

"Sexual abuse" means sexual abuse as defined in Iowa Code sections 709.1 and 726.2.

"Sexual abuse examination" means a medical examination provided to a woman, man, or child to collect evidence of sexual abuse victimization of that person as defined in Iowa Code sections 709.1 and 726.2 and provide treatment for the prevention of sexually transmitted disease pursuant to Iowa Code section 915.41. When applicable, the provider of a sexual abuse examination shall file a child abuse report with the Iowa department of human services as required by Iowa Code section 232.70.

**61 IAC 9.82(915) Application for sexual abuse examination payment.**

9.82(1) Consideration for payment. The department will consider payment upon receipt of a claim for reimbursement from a medical provider indicating that the claim is for the collection of evidence by sexual abuse examination. In the case that a victim, guardian of a victim, person responsible for the victim, or dependent of a victim who died of injuries sustained in a sexual assault has paid part or all of the charges incurred, a copy of the provider bill and documentation of personal payment of the bill must be submitted for reimbursement. An application for sexual abuse examination payment must include the federal identification number or social security number of the claimant.

9.82(2) Application filing. To apply for payment under the sexual abuse examination program, the form or bill submitted must identify the sexual assault victim by name, birth date, and patient number, indicate that the claim is for a sexual abuse examination, and itemize all services rendered and the fee for each service.

**61 IAC 9.83(915) Computation of sexual abuse examination payments.**

9.83(1) Payment for examination. The department shall make payment for sexual abuse examinations, as appropriate, for services including, but not limited to:

- a. Examiner's fee for collection of:

- (1) Patient's medical history;
- (2) Physical examination;
- (3) Collection of laboratory specimens;
- (4) Return visits to test for sexually transmitted disease;
- (5) Treatment for the prevention of sexually transmitted disease.

b. Examination facility.

- (1) Emergency room, clinic room or office room fee;
- (2) Pelvic tray and medically required supplies.

c. Laboratory collection and processing of specimens for; criminal evidence; sexually transmitted disease; and pregnancy testing.

9.83(2) Provider payment. The department will pay up to \$ 300 for the examination facility and \$ 200 for examiner fees. Any charges in excess of these amounts will require additional documentation from the provider. The crime victim assistance program will pay only those charges determined by the department to be reasonable and fair.

The Iowa department of public safety division of criminal investigation makes sexual abuse examination kits available to health care providers at no cost.

**61 IAC 9.84(915) Victim responsibility for payment.**

A victim of sexual abuse is not responsible for the payment of the costs of a sexual abuse examination determined to be eligible for payment by the department. A medical provider shall not submit any remaining balance after sexual abuse examination program payment to the sexual abuse victim.

**61 IAC 9.85(915) Sexual abuse examination -- right to restitution.**

In all criminal cases under Iowa Code chapter 709 and sections 726.2 and 710.2 in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, restitution may be ordered from the offender to the crime victim assistance program for the cost paid by the department for a sexual abuse examination rendered to the victim of that crime pursuant to Iowa Code section 910.2.

## REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

### **Iowa Code § 147.111. Report of treatment of wounds and other injuries.**

Any person licensed under the provisions of this subtitle who shall administer any treatment to any person suffering a gunshot or stab wound or other serious injury, as defined in section 702.18, which appears to have been received in connection with the commission of a criminal offense, or to whom an application is made for treatment of any nature because of any such gunshot or stab wound or other serious injury, as defined in section 702.18, shall at once but not later than twelve hours thereafter, report that fact to the law enforcement agency within whose jurisdiction the treatment was administered or an application therefore was made, or if ascertainable, to the law enforcement agency in whose jurisdiction the gunshot or stab wound or other serious injury occurred, stating the name of such person, the person's residence if ascertainable, and giving a brief description of the gunshot or stab wound or other serious injury. Any provision of law or rule of evidence relative to confidential communications is suspended insofar as the provisions of this section are concerned.

**HISTORY:** C31, 35, § 2537-d1; C39, § **2537.7**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 147.111

93 Acts, ch 100, § 2; 94 Acts, ch 1132, § 31; 96 Acts, ch 1036, § 30; 98 Acts, ch 1053, § 28; 99 Acts, ch 114, § 8

### **Iowa Code 147.112 Investigation and report by law enforcement agency.**

The law enforcement agency who has received any report required by this chapter and who has any reason to believe that the person injured was involved in the commission of any crime, either as perpetrator or victim, shall at once commence an investigation into the circumstances of the gunshot or stab wound or other serious injury and make a report of the investigation to the county attorney in whose jurisdiction the gunshot or stab wound or other serious injury occurred. Law enforcement personnel shall not divulge any information received under the provisions of this section and section 147.111 to any person other than a law enforcing officer, and then only in connection with the investigation of the alleged commission of a crime.

**HISTORY:** C31, 35, § 2537-d2; C39, § **2537.8**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 147.112

93 Acts, ch 100, § 3; 99 Acts, ch 114, § 9

**KANSAS**

***SUMMARY: There is no mandatory reporting requirement for sexual assault. It is mandatory to report gunshot and stab wounds. Forensic sexual assault examination is paid for when done at the request of a law enforcement officer.***

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**STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS****KS ST § 65-448. Qualified persons at medical care facilities to examine victims of sexual offenses, when; remedy for refusal; costs.**

(a) Upon the request of any law enforcement officer and with the written consent of the reported victim, any physician, a licensed physician assistant, who has been specially trained in performing sexual assault evidence collection, or a registered professional nurse, who has been specially trained in performing sexual assault evidence collection, on call or on duty at a medical care facility of this state, as defined by subsection (h) of K.S.A 65-425, and amendments thereto, shall examine persons who may be victims of sexual offenses cognizable as violations of K.S.A. 21-3502, 21-3503, 21-3504, 21-3505, 21-3506, 21-3602 or 21-3603, and amendments thereto, using Kansas bureau of investigation sexual assault evidence collection kits or similar kits approved by the Kansas bureau of investigation, for the purposes of gathering evidence of any such crime. If the physician, licensed physician assistant or registered professional nurse refuses to perform such physical examination the prosecuting attorney is hereby empowered to seek a mandatory injunction against such physician, licensed physician assistant or registered professional nurse to enforce the provisions of this act. Any refusal by a physician, licensed physician assistant or registered professional nurse to perform an examination which has been requested pursuant to this section shall be reported by the county or district attorney to the state board of healing arts or the board of nursing, whichever is applicable, for appropriate disciplinary action. The department of health and environment, in cooperation with the Kansas bureau of investigation, shall establish procedures for gathering evidence pursuant to this section. A minor may consent to examination under this section. Such consent is not subject to disaffirmance because of minority, and consent of parent or guardian of the minor is not required for such examination. The hospital or medical facility shall give written notice to the parent or guardian of a minor that such an examination has taken place.

(b) Costs of conducting an examination of a victim as herein provided including the costs of the sexual assault evidence collection kits shall be charged to and paid by the county where the alleged offense was committed. Such county may charge the defendant for the costs paid herein

as court costs assessed pursuant to K.S.A. 28-172a or 28-172c, and amendments thereto.

## REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

### **KS §21-4213. Unlawful failure to report a wound.**

(1) Unlawful failure to report a wound is the failure by an attending physician or other person to report his treatment of any wound, described in subsections (a) and (b) hereafter, to the office of the chief of police of the city or the office of the sheriff of the county in which such treatment took place:

(a) Any bullet wound, gunshot wound, powder burn or other injury arising from or caused by the discharge of a firearm; or

(b) Any wound which is likely to or may result in death and is apparently inflicted by a knife, ice pick, or other sharp or pointed instrument.

(2) Unlawful failure to report a wound is a class C misdemeanor.

## KENTUCKY

*Summary: Kentucky does not have mandatory reporting in rape, sodomy or other sex offense cases where the victim is an adult unless the perpetrator is the victim's spouse. It is mandatory to report incidents of domestic violence to the Kentucky Cabinet for Family and Children. The statute which requires hospitals providing emergency services to have staff available to provide forensic/medical exams without charge to the victim/patient is conditioned upon the victim reporting to the police. If the test is done to collect evidence, then it can be reimbursed by the Crime Victims' Compensation Board.*

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### STATUTES THAT MANDATE RAPE REPORTING

#### **KRS § 209.020. Definitions for chapter**

As used in this chapter, unless the context otherwise requires:

- (1) "Secretary" means the secretary of the Cabinet for Families and Children;
- (2) "Cabinet" means the Cabinet for Families and Children;
- (3) "Department" means the Department for Community Based Services of the Cabinet for Families and Children;
- (4) "Adult" means:
  - (a) A person eighteen (18) years of age or older, who because of mental or physical dysfunctioning, is unable to manage his own resources or carry out the activity of daily living or protect himself from neglect, or a hazardous or abusive situation without assistance from others, and who may be in need of protective services; or
  - (b) A person without regard to age who is the victim of abuse and neglect inflicted by a spouse;
- (5) "Protective services" means agency services undertaken with or on behalf of an adult in need of protective services who is being abused, neglected, or exploited. These services may include, but are not limited to conducting investigations of complaints of possible abuse, neglect, or exploitation to ascertain whether or not the situation and condition of the adult in need of protective services warrants further action; social services aimed at preventing and remedying abuse, neglect, and exploitation; and services directed toward seeking legal determination of whether or not the adult in need of protective services has been abused, neglected, or exploited and to ensure that he obtains suitable care in or out of his home;

(6) "Caretaker" means an individual or institution who has the responsibility for the care of the adult as a result of family relationship, or who has assumed the responsibility for the care of the adult person voluntarily, or by contract, or agreement;

(7) "Abuse" means the infliction of physical pain, mental injury, or injury of an adult;

(8) "Exploitation" means the improper use of an adult or an adult's resources by a caretaker or other person for the profit or advantage of the caretaker or other person;

(9) "Investigation" shall include, but is not limited to, a personal interview with the individual reported to be abused, neglected, or exploited. When abuse, or neglect is allegedly the cause of death, a coroner's or doctor's report shall be examined as part of the investigation;

(10) "Emergency" means that an adult is living in conditions which present a substantial risk of death or immediate and serious physical harm to himself or others;

(11) "Emergency protective services" are protective services furnished an adult in an emergency;

(12) "Protective placement" means the transfer of an adult from his present living arrangement to another;

(13) "Court" means the Circuit Court or the District Court if no judge of that Circuit Court is present in the county;

(14) "Access to records" means that any representative of the Cabinet for Families and Children actively involved in the conduct of an abuse, neglect, or exploitation investigation under this chapter shall be allowed access to the medical, mental, health, and financial records of the adult that are in the possession of any individual, hospital, firm, corporation or other facility, if necessary to complete the investigation mandated in this chapter; and

(15) "Neglect" means a situation in which an adult is unable to perform or obtain for himself the services which are necessary to maintain his health or welfare, or the deprivation of services by a caretaker which are necessary to maintain the health and welfare of an adult, or a situation in which a person deprives his spouse of reasonable services to maintain health and welfare.

**HISTORY:** Enact. Acts 1976, ch. 157, § 3; 1978, ch. 370, § 2, effective June 17, 1978; 1980, ch. 372, § 2, effective July 15, 1980; 1986, ch. 56, § 1, effective July 15, 1986; 1998, ch. 370, § 1, effective July 15, 1998; 1998, ch. 426, § 239, effective July 15, 1998; 2000, ch. 14, § 41, effective July 14, 2000.

**KRS § 209.030. Rules and regulations -- Reports -- Cabinet actions**

(1) The secretary may, within his discretion, adopt such rules, regulations, procedures, guidelines, or any other expressions of policy necessary to effect the purpose of this chapter insofar as such action is reasonably calculated to serve the public interest. The secretary may take necessary action

and may offer or cause to be offered protective services toward safeguarding the welfare of an adult who has experienced abuse or neglect, inflicted or caused by a spouse.

(2) Any person, including, but not limited to, physician, law enforcement officer, nurse, social worker, cabinet personnel, coroner, medical examiner, alternate care facility employee, or caretaker, having reasonable cause to suspect that an adult has suffered abuse, neglect, or exploitation, shall report or cause reports to be made in accordance with the provisions of this chapter. Death of the adult does not relieve one of the responsibility for reporting the circumstances surrounding the death.

(3) An oral or written report shall be made immediately to the cabinet upon knowledge of the occurrence of suspected abuse, neglect, or exploitation of an adult. Any person making such a report shall provide the following information, if known: The name and address of the adult, or of any other person responsible for his care; the age of the adult; the nature and extent of the abuse, neglect, or exploitation, including any evidence of previous abuse, neglect, or exploitation; the identity of the perpetrator, if known; the identity of the complainant, if possible; and any other information that the person believes might be helpful in establishing the cause of abuse, neglect, or exploitation.

(4) Upon receipt of the report, the cabinet shall take the following action as soon as practical:

- (a) Notify the appropriate law enforcement agency;
- (b) Initiate an investigation of the complaint; and
- (c) Make a written report of the initial findings together with a recommendation for further action, if indicated.

(5) Any representative of the cabinet may enter any health facility or health service licensed by the cabinet at any reasonable time to carry out the cabinet's responsibilities under this chapter. Any representative of the cabinet actively involved in the conduct of an abuse, neglect, or exploitation investigation under this chapter shall also be allowed access to the mental and physical health records of the adult which are in the possession of any individual, hospital, or other facility if necessary to complete the investigation mandated by this chapter.

(6) Any representative of the cabinet may with consent of the adult or caretaker enter any private premises where any adult alleged to be abused, neglected, or exploited is found in order to investigate the need for protective services for the purpose of carrying out the provisions of this chapter. If the adult or caretaker does not consent to the investigation, a search warrant may issue upon a showing of probable cause that an adult is being abused, neglected, or exploited, to enable a representative of the cabinet to proceed with the investigation.

(7) If a determination has been made that protective services are necessary when indicated by the investigation, the cabinet shall provide such services within budgetary limitations, except in such cases where an adult chooses to refuse such services.

(8) In the event the adult elects to accept the protective services to be provided by the cabinet, the caretaker shall not interfere with the cabinet when rendering such services.

**HISTORY:** Enact. Acts 1976, ch. 157, § 4; 1978, ch. 370, § 3, effective June 17, 1978; 1980, ch. 372, § 3, effective July 15, 1980; 1998, ch. 370, § 2, effective July 15, 1998.

**STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS**

**KRS § 216B.400 Emergency care -- Examination services for victims of sexual offenses -- Examination expenses paid by Crime Victims' Compensation Board**

(1) Where a person has been determined to be in need of emergency care by any person with admitting authority, no such person shall be denied admission by reason only of his inability to pay for services to be rendered by the hospital.

(2) Every hospital of this state which offers emergency services shall provide that a physician or a sexual assault nurse examiner, who shall be a registered nurse licensed in the Commonwealth and credentialed by the Kentucky Board of Nursing as provided under KRS 314.142, is available on call twenty-four (24) hours each day for the examinations of persons reported to any law enforcement agency to be victims of sexual offenses as defined by KRS 510.010 to 510.140, 530.020, 530.064, and 531.310.

(3) An examination provided in accordance with this section of a victim of a sexual offense may be performed in a sexual assault examination facility as defined in KRS 216B.015. An examination under this section shall apply only to an examination of a victim.

(4) The physician or sexual assault nurse examiner, acting under a statewide medical protocol which shall be developed by the chief medical examiner, and promulgated by the secretary of justice pursuant to KRS Chapter 13A shall, upon the request of any peace officer or prosecuting attorney, and with the consent of the reported victim, or upon the request of the reported victim, examine such person for the purpose of gathering physical evidence. This examination shall include but not be limited to:

- (a) Basic treatment and evidence gathering services; and
- (b) Laboratory tests, as appropriate.

(5) Each reported victim shall be informed of available services for treatment of venereal disease, pregnancy, and other medical and psychiatric problems. Pregnancy counseling shall not include abortion counseling or referral information.

(6) Each reported victim shall be informed of available crisis intervention or other mental health services provided by regional rape crisis centers providing services to victims of sexual assault.

(7) Notwithstanding any other provision of law, a minor may consent to examination under this section. This consent is not subject to disaffirmance because of minority, and consent of the parents or guardians of the minor is not required for the examination.

(8) (a) The examinations provided in accordance with this section shall be paid for by the Crime Victims' Compensation Board at a rate to be determined by the administrative regulation promulgated by the board after consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707.

(b) Upon receipt of a completed original claim form supplied by the board and itemized billing for a forensic sexual assault examination, the board shall reimburse the hospital or sexual assault examination facility, and the physician or sexual assault nurse examiner as provided in administrative regulations promulgated by the board pursuant to KRS Chapter 13A. Reimbursement shall be made to an out-of-state nurse who is credentialed in the other state to provide sexual assault examinations, an out-of-state hospital, or an out-of-state physician if the sexual assault occurred in Kentucky.

(c) Independent investigation by the Crime Victims' Compensation Board shall not be required for payment of claims under this section; however, the board may require additional documentation or proof that the forensic medical examination was performed.

(9) No charge shall be made to the victim for sexual assault examinations by the hospital, the sexual assault examination facility, the physician, the sexual assault nurse examiner, the victim's insurance carrier, or the Commonwealth.

HISTORY: Enact. Acts 1974, ch. 352, § 1(1); 1978, ch. 368, § 1, effective June 17, 1978; 1984, ch. 175, § 1, effective July 13, 1984; 1990, ch. 274, § 1, effective July 13, 1990; 1996, ch. 260, § 1, effective July 15, 1996; 2000, ch. 142, § 6, effective July 14, 2000; 2002, ch. 20, § 1, effective July 15, 2002; 2004, ch. 73, § 2, effective April 6, 2004.

**107 KAR 2:010. Payment schedule for medical examination of reported victims of sexual offenses.**

Section 1. The reimbursement for a physician, sexual assault nurse examiner, hospital, or sexual

assault examination facility for performing a sexual assault examination shall be the actual amount billed, not to exceed the following limits:

(1) A physician or sexual assault nurse examiner - \$200.

(2) A hospital or sexual assault examination facility for use of an emergency or examination room - \$250.

(3) A hospital, sexual assault examination facility, or laboratory to perform diagnostic laboratory testing - \$100.

(4) A hospital or sexual assault examination facility for medications and pharmaceuticals prescribed as a result of the examination and as part of basic treatment - \$100.

107 KY ADC 2:010

**LOUISIANA**

***SUMMARY: There is no mandatory reporting requirement specific to sexual assault; however, it is mandatory to report gunshot wounds and certain burns.***

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**REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS****La. R.S. § 14:403.4. Burn injuries and wounds; reports; registry; immunity; penalties**

A. The purpose of this Section is to combat arson through the rapid identification and apprehension of suspected arsonists who may suffer burn injuries during the commission of their crimes. It is the further intent of this Section to provide for a central registry for burn injuries and wounds data from which effective fire and arson prevention and fire safety education programs may be developed.

B. In every case of a burn injury or wound in which the victim sustains second or third degree burns to five percent or more of the body or any burns to the upper respiratory tract or laryngeal edema due to the inhalation of super-heated air, and every case of a burn injury or wound which is likely to or may result in death shall be reported to the office of state fire marshal, code enforcement and building safety, hereinafter sometimes referred to as the "office". That office shall then immediately notify the appropriate local or state investigatory agency or law enforcement agency of the receipt of such report and its contents.

C. (1) An oral report shall be made within twenty-four hours of the examination or treatment of the victim. The report shall be made by the physician attending or treating the case, or by the manager, superintendent, director, or other person in charge whenever such case is treated in a hospital, burn center, sanitarium, or other medical facility. The report may be recorded electronically or in any other suitable manner, by the office of state fire marshal, code enforcement and building safety.

(2) The oral report shall contain the following information if known:

- (a) Victim's name, address, and date of birth.
- (b) Address where the burn injury occurred.
- (c) Date and time of the burn injury.
- (d) Degree of burns and percent of body burned.
- (e) Area of body injured.
- (f) Injury severity.

- (g) Apparent cause of burn injury.
- (h) Name and address of reporting facility.
- (i) Name of the attending physician.

D. (1) The office shall maintain a central registry of all reported cases of the treatment or examination of persons with burn injuries or wounds. The registry may be used to provide information to those agencies whose duties include the investigation into possible arson activities.

(2) The office of state fire marshal, code enforcement and building safety, may adopt rules and regulations as may be necessary in carrying out the provisions of this Section. Specifically such rules shall provide for cooperation with local investigatory and law enforcement agencies and may also authorize law enforcement personnel and the state fire marshal to review those medical records of reported victims which relate to the burn without the consent of the victim.

E. No cause of action shall exist against any person who in good faith makes a report pursuant to this Section, cooperates in an investigation by any agency, or participates in any judicial proceeding resulting from such report.

F. Any person who knowingly files a false report shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

**HISTORY:** Acts 1988, No. 641, § 1; Acts 1991, No. 657, § 1; Acts 1997, No. 1187, § 2.

**La. R.S. § 14:403.5. Gunshot wounds; mandatory reporting**

A. The purpose of this Section is to aid law enforcement in combating violent crime through the rapid identification and reporting of all gunshot wounds or injuries treated by any medical professionals, practitioners, or associated personnel.

B. In every case of a gunshot wound or injury presented for treatment to a medical professional, practitioner, or associated person, that professional, practitioner, or associated person shall make an oral notification to either the sheriff of the parish in which the wounded person was presented for treatment, or the chief or superintendent of police in the municipality in which the wounded person was presented for treatment immediately after complying with all applicable state and federal laws, rules, and regulations related to the treatment of emergencies and before the wounded person is released from the hospital. A written notation of this action shall be made on the emergency record.

C. The provisions of this Section shall not apply to any wounds or injuries received from the firing of an air gun.

D. Any report of a gunshot wound or injury required to be reported by this Section which does not result in criminal prosecution shall not become public record and shall be destroyed by the law enforcement agency receiving the information.

E. Any person who fails to file a report under this Section shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both. Any person who knowingly files a false report under this Section shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

**HISTORY:** Acts 1997, No. 1309, § 1.

**MAINE**

***Summary: It is not mandatory in Maine to report sexual assault. It is mandatory to report gunshot wounds. Victims' compensation fund will pay for sexual assault forensic examinations. The hospital may not identify victims when seeking reimbursement.***

**STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS**

**Code Me. R. 26-550 Ch. 8, § 1 Forensic Examinations for Gross Sexual Assaults:**

1. Maine licensed medical facilities and licensed health care practitioners shall be reimbursed from the Victims' Compensation Fund for forensic examinations performed on alleged victims of gross sexual assault in accordance with these Rules. "Gross Sexual Assault" has the meaning as found in Title 17-A sec. 253. "Alleged victim" means any person who alleges that he or she is a victim of gross sexual assault and any person who is unconscious or incapacitated due to mental disease, disorder or defect and is identified by law enforcement or a health care practitioner as the victim of gross sexual assault. The maximum payment by the Fund for the forensic assault examination shall not exceed the statutory maximum of \$500.00.

A. To be eligible for payment, the gross sexual assault forensic examination must include at least all services directly related to the gathering of forensic evidence and related testing and treatment for pregnancy and sexually transmitted diseases. Licensed hospital and licensed health care practitioners must have available and offer to provide at least the following tests and treatments:

(1) Professional/practitioner's services history

Physical Collection of specimens

Treatment for the prevention of sexually transmitted infection

(2) Emergency department

Emergency room, clinic room or office room fee

Pelvic tray

(3) Laboratory

Fixed smear for sperm

Blood testing for syphilis and Hepatitis B

HIV test

Cultures for gonorrhea, chlamydia, trichomonas and other sexually transmitted diseases (STD)

(4) Pregnancy testing (blood test or urinalysis)

(5) Other laboratory tests that are required for the purpose of evidentiary examination

(6) Medications

Pregnancy prophylaxis

Sexually transmitted disease prophylaxis

One dose sedative, antidepressant or tranquilizer

**Anti-emetic**

The tests and treatments performed shall be based on each patient's individual need and preference. If performed by a licensed hospital or licensed health care practitioner, any of these listed tests and treatments may be billed as part of the forensic examination.

B. For purposes of reimbursement, all services directly related to the gathering of forensic evidence and initial testing and treatment for pregnancy and sexually transmitted diseases constitute the sexual assault forensic examination.

**Code Me. R. 26-550 Ch. 8, § 2 Treatment of Victims:**

1. Any adult victim shall decide whether to report the incident to a law enforcement agency. The medical facility may not require an adult victim to report the incident in order to receive medical treatment or have forensic evidence collected. Evidence will be collected only where the victim has given permission. However, permission is not required in instances where the victim is unconscious or mentally incapable of consent. Should the adult victim wish to report the incident, the appropriate law enforcement agency shall be contacted by the medical facility. The licensed hospital or licensed health care practitioner performing a sexual assault forensic examination upon an alleged victim under the age of eighteen (18) shall follow the reporting rules required by law.

**Code Me. R. 26-550 Ch. 8, § 3 Payment for Forensic Examinations for alleged victims of gross sexual assault:**

1. A victim seeking examination and treatment following a gross sexual assault shall be exempted from the payment of expenses incurred as a result of sexual assault forensic examination services. The licensed hospital or licensed health care practitioner may bill the patient or patient's insurer for services outside the scope of the forensic examination. A victim may apply to the Victims' Compensation Board for reimbursement for losses outside the scope of the gross sexual assault forensic examination.

2. The Victims' Compensation Board shall pay the costs of forensic examinations for alleged victims of gross sexual assault from the Victims' Compensation Fund. To be reimbursable an examination must incorporate the use of a uniform standardized forensic examination kit distributed by the Department of Public Safety, and that use must have a forensic basis. If at any time a uniform kit is not available for distribution, the licensed hospital or licensed health care practitioner must use a standardized evidence collection kit that has met the requirements established by rule of the Department of Public Safety. The maximum payment by the fund for a forensic examination shall not exceed the statutory maximum of \$500.00. The Board may delegate to the director of the Victims' Compensation Board the review of claims and approval of reimbursement for services included in forensic examinations in accord with rules and guidelines established by the Victims' Compensation Board. Payments from the Compensation Fund shall be made directly to the licensed hospital or licensed health care practitioner and shall be considered

payment in full and shall bar balance billing or other actions for collection.

A. Upon completion of a gross sexual assault forensic examination the licensed hospital or licensed health care practitioner shall submit an itemized bill detailing the treatment costs and examination costs for collection of evidence required by the Department of Public Safety. Claims will be paid only where the sexual assault procedures as required by 24 MRSA §2986, 25 MRSA §2915, 25 MRSA §3821, and 5 MRSA s3360-M for forensic examinations and treatment are followed.

B. In the event that there are multiple fees from separate service providers, the statutory maximum shall be allocated among the service providers.

C. The licensed hospital or licensed health care practitioner to receive reimbursement is responsible for submitting to the Victims' Compensation Board (on forms approved by the Board) the following information:

- (1) Victim tracking number
- (2) Examination kit number
- (3) Victim's date of birth
- (4) Victim's gender
- (5) Date and time of incident
- (6) Location of incident (Town)
- (7) Date and time of treatment by medical provider
- (8) Whether a report to law enforcement was filed
- (9) Name of law enforcement agency notified
- (10) Name and address of medical provider
- (11) Hospital / Practitioner Federal Tax Identification Number
- (12) Provider billing office contact person and phone number
- (13) Signed verification from the licensed health care practitioner
- (14) All itemized copies of medical bills complete with current procedural terminology (CPT) codes. This billing statement must show individual charges for lab work as listed in 1A of this rule.

D. The licensed medical facility or licensed practitioner must send the reimbursement form with the attached itemized bills to the Victims' Compensation Board.

E. All claims must be submitted to the Board within 60 days of examination.

**5 M.R.S. § 3360-M. Payment for forensic examinations for alleged victims of gross sexual assault**

1. PAYMENT. The board shall pay the costs of forensic examinations for alleged victims of gross sexual assault from the Victims' Compensation Fund. The board shall track expenditures for forensic examinations separately from all other expenditures. Forensic examination payments are not subject to any other provision of this chapter.

2. FORENSIC EXAMINATION. The board shall determine by rule what a forensic

examination may include for purposes of payment. An examination must include at least all services directly related to the gathering of forensic evidence and related testing and treatment for pregnancy and sexually transmitted diseases. The board shall pay a licensed hospital or licensed health care practitioner the actual cost of the forensic examination up to a maximum of \$ 500.

3. **PROCESS FOR PAYMENT.** A licensed hospital or licensed health care practitioner that performs forensic examinations for alleged victims of gross sexual assault shall submit a bill to the Victims' Compensation Board directly for payment of the forensic examinations. The hospital or health care practitioner that performs a forensic examination shall take steps necessary to ensure the confidentiality of the alleged victim's identity. The bill submitted by the hospital or health care practitioner may not identify the alleged victim by name but must be assigned a tracking number that corresponds to the forensic examination kit. The tracking number may not be the alleged victim's social security number. The hospital or health care practitioner that performs the examination may not bill the alleged victim or the alleged victim's insurer, nonprofit hospital or medical service organization or health maintenance organization for payment of the examination. The alleged victim is not required to report the alleged offense to a law enforcement agency.

4. **OTHER REIMBURSEMENT.** The fact that forensic examinations are paid for separately through the Victims' Compensation Fund does not preclude alleged victims of gross sexual assault from seeking reimbursement for expenses other than those for the forensic examination. A victim seeking reimbursement from the Victims' Compensation Fund for expenses other than the forensic examination is subject to all other provisions of this chapter.

5. **RULES.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

## REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

### **17-A M.R.S. § 512. Failure to report treatment of a gunshot wound**

1. A person is guilty of failure to report treatment of a gunshot wound if, being a licensed physician, he treats a human being for a wound apparently caused by the discharge of a firearm and knowingly fails to report the same to a law enforcement officer within 24 hours.

2. Failure to report treatment of a gunshot wound is a Class E crime.

## MARYLAND

***Summary: It is not mandatory in Maryland to report sexual assault. It is mandatory to report gunshot wounds. Examinations will be paid for when they conform to standards adopted by the state or meet the evidentiary requirements of the local prosecutor.***

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **MD Hum. Res. 07.06.07.05 Program Services.**

A. The local program shall offer services that directly benefit the crime victim. These services may include, but are not limited to, the following:

(1) Crisis intervention services that meet urgent emotional or physical needs of crime victims. Crisis intervention services may include the operation of a 24-hour hotline that provides counseling or referral for crime victims.

(2) Emergency services that:

(a) Provide temporary shelter for crime victims who cannot safely remain in their current lodgings;

(b) Offer measures such as repair of locks or boarding up of windows to prevent the immediate reburglarization of a home or an apartment; or

(c) Provide crime victims petty cash for meeting immediate needs related to transportation, food, shelter, and other necessities.

(3) Support services that include:

(a) Follow-up counseling for other than crisis reactions, reassurance and empathetic listening, and guidance for resolving practical problems created by the experience of victimization;

(b) Acting on the crime victim's behalf vis-a-vis other social services and criminal justice agencies;

(c) Assistance in obtaining the swift return of property being kept by police as evidence;

(d) Intervention, as appropriate, with landlords or employers; and

(e) Referral to other sources of assistance, as needed.

(4) Court-related services that assist crime victims in participating in criminal justice proceedings including transportation to court, child care, and accompaniment services.

(5) Payment of all reasonable costs for a forensic examination of a victim of sexual assault/abuse, to the extent that these costs are not otherwise reimbursed or paid by third parties. Funds may only be used to pay for those forensic examinations that conform to standards adopted by the State or meet the evidentiary requirements of the local prosecutor.

(6) Training for those individuals, salaried or volunteer staff, who provide direct services to crime victims, which may include personnel employed by criminal justice, social services, mental health,

or related agencies.

(7) Printing and distribution of brochures and similar announcements describing the direct services available and how to obtain a program's assistance, and similar public notification efforts intended to recruit volunteers.

B. The local program shall assist victims in seeking available crime victims' compensation benefits. This assistance may be achieved by identifying and notifying potential recipients of the compensation program and assisting them with the application forms and procedures.

C. The local program shall promote coordinated public and private efforts to aid crime victims within the community served.

## REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

### **Md. HEALTH-GENERAL Code Ann. § 20-703. Gunshot**

(a) Required. -- A physician, pharmacist, dentist, or nurse who treats an individual for an injury that was caused or shows evidence of having been caused by a gunshot of any type, or the individual in charge of a hospital that treats the injured individual, shall notify the county sheriff, the county police, or the Department of State Police of the injury as soon as practicable.

(b) Contents. -- A report of injury shall include:

- (1) The injured individual's name and address, if known;
- (2) A description of the injury; and
- (3) Any other facts concerning the matter that might assist in detecting crime.

(c) Penalty. -- A person who fails to make a report required by this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$ 25.

**HISTORY:** An. Code 1957, art. 27, § 336A; 2002, ch. 26, § 4.

## MASSACHUSETTS

*Summary: Massachusetts has mandatory rape reporting; however, the report may not include the victim's name, address or any other identifying information. Also, victims are not required to prosecute in order to have a sexual assault forensic examination completed. Massachusetts also has a mandatory reporting requirement for gunshot wounds.*

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### STATUTES THAT MANDATE RAPE REPORTING

#### **ALM GL ch. 112, § 12A1/2 (2005): Mandatory reporting required**

##### **§ 12A1/2. Reporting of Rape or Sexual Assault Crimes; Confidentiality of Victim's Identity; Penalty.**

Every physician attending, treating, or examining a victim of rape or sexual assault, or, whenever any such case is treated in a hospital, sanatorium or other institution, the manager, superintendent or other person in charge thereof, shall report such case at once to the criminal history systems board and to the police of the town where the rape or sexual assault occurred but shall not include the victim's name, address, or any other identifying information. The report shall describe the general area where the attack occurred.

Whoever violates any provision of this section shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars.

### REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

#### **ALM GL ch. 112, § 12A. Reports of Treatment of Certain Wounds, etc.; Exceptions; Penalty.**

Every physician attending or treating a case of bullet wound, gunshot wound, powder burn or any other injury arising from or caused by the discharge of a gun, pistol, BB gun, or other air rifle or firearm, or examining or treating a person with a burn injury affecting five per cent or more of the surface area of his body, or, whenever any such case is treated in a hospital, sanatorium or other institution, the manager, superintendent or other person in charge thereof, shall report such case at once to the colonel of the state police and to the police of the town where such physician, hospital, sanatorium or institution is located or, in the case of burn injuries, notification shall be made at once to the state fire marshal and to the police of the town where the burn injury occurred. This section shall not apply to such wounds, burns or injuries received by any member of the armed forces of the United States or of the commonwealth while engaged in the actual performance of duty. Every

physician attending or treating a case of wound or injury caused by a knife or sharp or pointed instrument shall, if in his opinion a criminal act was involved, report such case forthwith to the police authorities of the town in which he attended or treated such wound or injury. Whoever violates any provision of this section shall be punished by a fine of not less than fifty nor more than one hundred dollars. The colonel of state police shall make available to the commissioner of public health all reports regarding: (i) bullet wounds, gunshot wounds, powder burns or any other injury arising from or caused by the discharge of a rifle, shotgun, firearm or air rifle; (ii) burn injuries affecting 5 per cent or more of the surface area of the human body; and (iii) wounds or injuries caused by a knife or other sharp or pointed instrument; provided, however, that personal information identifying the victim or the perpetrator may be redacted if the release of such information may compromise an investigation.

**HISTORY:**

1927, 69; 1943, 41; 1962, 407; 1963, 108; 1982, 218; 1986, 231; 1986, 557, § 106; 1996, 151, §§ 268, 269; 1998, 180, § 5; 1998, 358, § 2

**ALM GL ch. 268, § 40. Failure of Witness to Report Aggravated Rape, Rape, Murder, Manslaughter, or Armed Robbery; Penalty.**

Whoever knows that another person is a victim of aggravated rape, rape, murder, manslaughter or armed robbery and is at the scene of said crime shall, to the extent that said person can do so without danger or peril to himself or others, report said crime to an appropriate law enforcement official as soon as reasonably practicable. Any person who violates this section shall be punished by a fine of not less than five hundred nor more than two thousand and five hundred dollars.

**HISTORY:**

1927, 69; 1943, 41; 1962, 407; 1963, 108; 1982, 218; 1986, 231; 1986, 557, § 106; 1996, 151, §§ 268, 269; 1998, 180, § 5; 1998, 358, § 2

## MICHIGAN

***Summary: Mandatory reporting required is not specifically required for rape; however, it is required where persons are suffering from a wound or other injury inflicted by means of a knife, gun, pistol or other deadly weapon or other means of violence.***

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### REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

#### **MCLS § 750.411 Hospitals, pharmacies, physicians; duty to report injuries; violation as misdemeanor; immunity; limitations.**

(1) A person, firm, or corporation conducting a hospital or pharmacy in this state, the person managing or in charge of a hospital or pharmacy, or the person in charge of a ward or part of a hospital to which 1 or more persons come or are brought suffering from a wound or other injury inflicted by means of a knife, gun, pistol, or other deadly weapon, or by other means of violence, has a duty to report that fact immediately, both by telephone and in writing, to the chief of police or other head of the police force of the village or city in which the hospital or pharmacy is located, or to the county sheriff if the hospital or pharmacy is located outside the incorporated limits of a village or city. The report shall state the name and residence of the person, if known, his or her whereabouts, and the cause, character, and extent of the injuries and may state the identification of the perpetrator, if known.

(2) A physician or surgeon who has under his or her charge or care a person suffering from a wound or injury inflicted in the manner described in subsection (1) has a duty to report that fact in the same manner and to the same officer as required by subsection (1).

(3) A person, firm, or corporation that violates this section is guilty of a misdemeanor.

(4) To the extent not protected by the immunity conferred by 1964 PA 170, MCL 691.1401 to 691.1415, a person who makes a report in good faith under subsection (1) or (2) or who cooperates in good faith in an investigation, civil proceeding, or criminal proceeding conducted as a result of such a report is immune from civil or criminal liability that would otherwise be incurred by making the report or cooperating in the investigation or civil or criminal proceeding. A person who makes a report under subsection (1) or (2) or who cooperates in an investigation, civil proceeding, or criminal proceeding conducted as a result of such a report is presumed to have acted in good faith. The presumption created by this subsection may be rebutted only by clear and convincing evidence.

(5) The immunity from civil and criminal liability granted under subsection (4) extends only to the actions described in subsection (4) and does not extend to another act or omission that is negligent or that amounts to professional malpractice, or both, and that causes personal injury or death.

(6) The physician-patient privilege created under section 2157 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2157, a health professional-patient privilege created under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, and any other health professional-patient privilege created or recognized by law do not apply to a report made under subsection (1) or (2), are not valid reasons for a failure to comply with subsection (1) or (2), and are not a defense to a misdemeanor charge filed under this section.

## MINNESOTA

*Summary: Minnesota does not have a mandatory reporting requirement for sexual assaults against adults. Costs of a sexual assault forensic examination shall be paid by the county when the purpose is to gather evidence. Health care providers are required to report gunshot wounds, burns, and other injuries the medical provider has reasonable cause to believe have been inflicted by a perpetrator of a crime by a dangerous weapon other than a firearm.*

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **Minn. Stat. § 609.35 Costs of medical examination**

(a) Costs incurred by a county, city, or private hospital or other emergency medical facility or by a private physician for the examination of a victim of criminal sexual conduct when the examination is performed for the purpose of gathering evidence shall be paid by the county in which the criminal sexual conduct occurred. These costs include, but are not limited to, full cost of the rape kit examination, associated tests relating to the complainant's sexually transmitted disease status, and pregnancy status.

(b) Nothing in this section shall be construed to limit the duties, responsibilities, or liabilities of any insurer, whether public or private. However, a county may seek insurance reimbursement from the victim's insurer only if authorized by the victim. This authorization may only be sought after the examination is performed. When seeking this authorization, the county shall inform the victim that if the victim does not authorize this, the county is required by law to pay for the examination and that the victim is in no way liable for these costs or obligated to authorize the reimbursement.

(c) The applicability of this section does not depend upon whether the victim reports the offense to law enforcement or the existence or status of any investigation or prosecution.

**HISTORY:** 1975 c 374 s 11; 1981 c 273 s 6; 1986 c 351 s 16; 1Sp1986 c 3 art 1 s 75; 2002 c 381 s 6; 2003 c 116 s 3

### REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

#### **Minn. Stat. § 626.52 Reporting of suspicious wounds by health professionals**

Subdivision 1. Definition. As used in this section, "health professional" means a physician, surgeon, person authorized to engage in the practice of healing, superintendent or manager of a hospital,

nurse, or pharmacist.

Subd. 2. Health professionals required to report. A health professional shall immediately report, as provided under section 626.53, to the local police department or county sheriff all bullet wounds, gunshot wounds, powder burns, or any other injury arising from, or caused by the discharge of any gun, pistol, or any other firearm, which wound the health professional is called upon to treat, dress, or bandage.

A health professional shall report to the proper police authorities any wound that the reporter has reasonable cause to believe has been inflicted on a perpetrator of a crime by a dangerous weapon other than a firearm as defined under section 609.02, subdivision 6.

Subd. 3. Reporting burns. A health professional shall file a written report with the state fire marshal within 72 hours after being notified of a burn injury or wound that the professional is called upon to treat, dress, or bandage, if the victim has sustained second- or third-degree burns to five percent or more of the body, the victim has sustained burns to the upper respiratory tract or sustained laryngeal edema from inhaling superheated air, or the victim has sustained a burn injury or wound that may result in the victim's death. The state fire marshal shall provide the form for the report.

Subd. 4. Immunity from liability. Any person reporting in good faith and exercising due care shall have immunity from any liability, civil or criminal, that otherwise might result by reason of the person's actions pursuant to this section or section 626.53. No cause of action may be brought against any person for not making a report pursuant to this section or section 626.53.

*(9950-22a) 1935 c 165 s 1; 1963 c 489 s 1; 1965 c 759 s 1; 1985 c 288 s 1; 1986 c 444; 1988 c 548 s 1,2; 1989 c 290 art 8 s 3; 1Sp2001 c 8 art 12 s 17*

## MISSISSIPPI

***SUMMARY: There is no mandatory reporting requirement for sexual assault. There is a mandatory reporting requirement for gunshot and stab wounds. Sexual assault forensic examinations are only paid for by the Division of Victim Compensation when the victim cooperates with law enforcement.***

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **MS Code § 99-37-25. Payment for medical examination of rape victim; examination of accused**

(1)(a) When a person is brought into a doctor's office, a hospital or a medical clinic in this state by a law enforcement agency as the victim of an alleged rape or sexual assault, or comes into a doctor's office, a hospital or a medical clinic in the state alleging rape or sexual assault against the person which results in a criminal investigation, the bill for the medical forensic examination and the preparation of the sexual assault evidence collection kit will be sent to the Division of Victim Compensation, Office of the Attorney General. The Division of Victim Compensation shall pay for the medical examination conducted for the procurement of evidence to aid in the investigation and prosecution of the alleged offense. Such payment shall be limited to the customary and usual hospital and physician charges for such services in the area. Such payment shall be made by the Division of Victim Compensation directly to the health care provider. No bill for the examination will be submitted to the victim, nor shall the medical facility hold the victim responsible for payment. However, if the victim refuses to cooperate with the investigation or prosecution of the case, the Division of Victim Compensation may seek reimbursement from the victim. The victim may be billed for any further medical services not required for the investigation and prosecution of the alleged offense. In cases where the damage caused by the alleged sexual assault requires medical treatment or diagnosis in addition to the examination, the patient will be given information about the availability of victim compensation and the procedure for applying for such compensation.

(b) Upon application submitted by the district attorney, provided the proper warrant or court order has been issued, the county in which an offense of sexual assault or of felonious abuse or battery of a child as described in Section 97-5-39, touching or handling a child for lustful purposes as described in Section 97-5-23, exploitation of children as described in Section 97-5-33 or sexual battery as described in Section 97-3-95, or an attempt to commit such offense has occurred shall pay for a medical forensic examination of the person arrested, charged or convicted of such offense to determine if the person so arrested, charged or convicted has any sexually transmitted disease and for the collection of evidence. Such payment shall be made by the county directly to the health care

provider or other service performing the collection of evidence and tests. The results of such test shall be made available to the victim or, if the victim is a child, to the guardian of the victim.

(2) Any defendant who is convicted of, or pleads guilty or nolo contendere to, an offense in violation of rape, felonious abuse or battery of a child as described in Section 97-5-39, touching or handling a child for lustful purposes as described in Section 97-5-23, exploitation of children as described in Section 97-5-33 or sexual battery as described in Section 97-3-95, or an attempt to commit any such offense, shall be ordered by the court to make restitution to the Division of Victim Compensation in an amount equal to the compensation paid by the Division of Victim Compensation to the victim or medical provider for the medical forensic examination and to the county for tests for sexually transmitted diseases. Such restitution shall be in addition to any restitution which the court orders the defendant to pay the victim under the provisions of Chapter 37 of Title 99, (Sections 99-37-1 through 99-37-21), Mississippi Code of 1972.

(3) The Division of Victim Compensation is hereby authorized, in its discretion, to make application for and comply with such requirements as may be necessary to qualify for any federal funds as may be available as a result of services rendered to crime victims under the provisions of this section.

## REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

### **MS § 45-9-31. Duty to report**

Any physician, surgeon, dentist, veterinarian, paramedical employee, or nurse, or any employee of a hospital, clinic, or any other medical institution or office where patients regularly receive care, who treats, at any location, any human being suffering from a wound or injury and who has reason to believe or ought to know that the wound or injury was caused by gunshot or knifing, or receiving a request for such treatment, shall report the same immediately to the municipal police department or sheriff's office of the municipality or county in which such treatment is administered or request for such treatment is received. If the wound or injury is the result of a hunting or boating accident, the injury shall be reported immediately to the Mississippi Department of Wildlife, Fisheries and Parks.

Any person making a report or the reports required by this section shall be immune from civil liability for the making of the said reports.

## MISSOURI

*Summary: Missouri does not have a statute that requires rape reporting. Gunshot wounds are required to be reported. The department of health and senior services shall pay for the forensic examination if a report of the examination is filed with the prosecuting attorney.*

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **MS § 191.225. Costs of medical examination of certain crime victims payable by department of health and senior services, when, conditions**

1. The department of health and senior services shall make payments to hospitals and physicians, out of appropriations made for that purpose, to cover the cost of the medical examination not covered by insurance, Medicare or Medicaid of persons who may be a victim of the crime of rape as defined in section 566.030, RSMo, or a victim of a crime as defined in chapter 566, RSMo, or sections 568.202, 568.050, 568.060, 568.080, 468.090, 568.110, and 568.175, RSMo, if:

- (1) The victim or the victim's guardian consents in writing to the examination;
- (2) The report of the examination is made on a form approved by the attorney general with the advice of the department of health and senior services; and
- (3) The report of the examination is filed by the victim with the prosecuting attorney of the county in which the alleged incident occurred.

2. A minor may consent to examination under this section. Such consent is not subject to disaffirmance because of minority, and consent of parent or guardian of the minor is not required for such examination. The hospital or physician making the examination shall give written notice to the parent or guardian of a minor that such an examination has taken place.

3. The attorney general, with the advice of the department of health and senior services, shall develop the forms and procedures for gathering evidence under the provisions of this section and shall furnish every hospital and physician in this state with copies of such forms and procedures.

4. Reasonable hospital and physicians charges for eligible examinations shall be billed to and paid by the department of health and senior services.

### REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

**R.S. Mo. § 578.350. Gunshot wounds--physicians, nurses, therapists, duty to report, content--violation, penalty**

1. Any person licensed under chapter 334 or 335, RSMo, who treats a person for a wound inflicted by gunshot shall immediately report to a local law enforcement official the name and address of the person, if known, and if unknown, a description of the person, together with an explanation of the nature of the wound and the circumstances under which the treatment was rendered.
2. Any person licensed under chapter 334 or 335, RSMo, who knowingly fails to report the injuries described in this section is guilty of the offense of medical deception.
3. Medical deception is an infraction.

## MONTANA

*Summary: Montana does not have a duty to report sexual assault. It does have a duty to report that a victim has been stabbed or shot. Law enforcement shall pay for a forensic examination when it is directed by the agency or when the evidence obtained is used for the investigation, prosecution or resolution of an offense. The office of restorative justice shall pay for the medical examination if the cost is not the responsibility of local law enforcement.*

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **Mont. Code Anno., § 46-15-411. Payment for medical evidence -- alleged sexual offenses.**

(1) The local law enforcement agency within whose jurisdiction an alleged incident of sexual intercourse without consent, sexual assault, or incest occurs shall pay for the medical examination of a victim of the alleged offense when the examination is directed by the agency or when evidence obtained by the examination is used for the investigation, prosecution, or resolution of an offense.

(2) (a) The office of restorative justice in the department of justice shall, as long as funds are available from an appropriation made for this purpose, pay for the medical examination of a victim of an alleged incident of sexual intercourse without consent, sexual assault, or incest if the cost is not the responsibility of a local law enforcement agency under subsection (1).

(b) In administering the provisions of subsection (2)(a), the office of restorative justice shall:

- (i) identify priorities for funding services, activities, and criteria for the receipt of program funds;
- (ii) monitor the expenditure of funds by organizations receiving funds under this section;
- (iii) evaluate the effectiveness of services and activities under this section; and
- (iv) adopt rules necessary to implement this subsection (2).

(3) This section does not require a law enforcement agency or the state to pay any costs of treatment for injuries resulting from the alleged offense.

### REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

**Mont. Code Anno. § 37-2-302 Gunshot or stab wounds to be reported.**

The physician, nurse, or other person licensed to practice a health care profession treating the victim of a gunshot wound or stabbing shall make a report to a law enforcement officer by the fastest possible means. Within 24 hours after initial treatment or first observation of the wound, a written report shall be submitted, including the name and address of the victim, if known, and shall be sent by regular mail.

## NEBRASKA

*Summary: Nebraska does not have a specific requirement that rape be reported; however, it has a requirement that wounds or injuries of violence which appear to have been received in connection with the commission of a criminal offense be reported. A forensic examination shall be paid for by the primary investigating law enforcement agency.*

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **R.R.S. Neb. § 13-607. Sexual assaults; forensic medical examination; payment; forensic DNA testing; requirements**

(1) The full out-of-pocket cost or expense that may be charged to a sexual assault victim in connection with a forensic medical examination shall be paid for by the law enforcement agency of a political subdivision if such law enforcement agency is the primary investigating law enforcement agency investigating the reported sexual assault.

(2) Except as provided under section 81-2010, all forensic DNA tests shall be performed by a laboratory which is accredited by the American Society of Crime Laboratory Directors-LAB-Laboratory Accreditation Board or the National Forensic Science Technology Center or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the society or center.

### REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

#### **R.R.S. Neb. § 28-902 Failure to report injury of violence; physician or surgeon; emergency room or first-aid station attendant; penalty**

(1) Every person engaged in the practice of medicine and surgery, or who is in charge of any emergency room or first-aid station in this state, shall report every case, in which he is consulted for treatment or treats a wound or injury of violence which appears to have been received in connection with the commission of a criminal offense, immediately to the chief of police of the municipality or to the sheriff of the county wherein the consultation or treatment occurs. Such report shall include the name of such person, the residence, if ascertainable, and a brief description of the injury. Any provision of law or rule of evidence relative to confidential communications is suspended insofar as the provisions of this section are concerned.

(2) Any person who fails to make the report required by subsection (1) of this section commits a Class III misdemeanor.

**HISTORY:** Laws 1977, LB 38, § 187.

## NEVADA

***Summary: It is not mandatory to report sexual assault. It is mandatory to report knife and gunshot wounds as well as certain burns. The filing of a report with law enforcement is a prerequisite to receiving medical treatment at county expense for sexual assault.***

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **NRS § 217.310 Application for medical and psychological treatment of victim and spouse; companionship during counseling; prerequisite to approval**

1. If any victim of sexual assault requires medical treatment for physical injuries as a result of the sexual assault, in addition to any initial emergency medical care provided, or if any victim or spouse of such a victim suffers emotional trauma as a result of the sexual assault, the victim or spouse may, upon submitting an affidavit as required by subsection 2, apply to the board of county commissioners in the county where the sexual assault occurred for treatment at county expense.
2. The board shall approve an application for treatment upon receiving an affidavit from the applicant declaring that:
  - (a) The applicant is a victim of sexual assault or spouse of such a victim;
  - (b) The sexual assault occurred in the county; and
  - (c) The victim requires medical treatment for physical injuries, or the victim or spouse has suffered emotional trauma, as a result of the sexual assault.
3. A victim who has suffered emotional trauma may select a relative or close friend to receive counseling with the victim if the counselor agrees that such companionship will be helpful to the victim. If the victim's application for treatment is approved, counseling for the relative or friend must also be approved.
4. The filing of a report with the appropriate law enforcement agency is a prerequisite to qualify for treatment under the provisions of this section.

#### **NRS § 449.244. Certain costs for examination or treatment of victims of sexual offenses to be charged to county**

1. Any costs incurred by a hospital for:

(a) The examination of the victim of a sexual offense, when the examination is performed for the purposes of gathering evidence for possible prosecution of the person who committed the offense;  
or

(b) Initial emergency medical care for the victim,

must not be charged directly to the victim. The costs must be charged to the county in whose jurisdiction the offense was committed.

2. Whenever costs are incurred by a hospital for treatment which has been approved by the board of county commissioners pursuant to [NRS 217.310](#) for the victim of a sexual assault and any other person eligible for treatment, the costs of the treatment, not to exceed \$ 1,000, must be charged to the county which authorized the treatment. Any remainder must be handled the same as other hospital costs.

**REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS**

**NRS § 629.041. Provider of health care to report persons having certain injuries**

Every provider of health care to whom any person comes or is brought for treatment of an injury which appears to have been inflicted by means of a firearm or knife, not under accidental circumstances, shall promptly report the person's name, if known, his location and the character and extent of the injury to an appropriate law enforcement agency.

**NRS § 629.045. Provider of health care to report persons having certain burns**

1. Every provider of health care to whom any person comes or is brought for the treatment of:

(a) Second or third degree burns to 5 percent or more of his body;

(b) Burns to his upper respiratory tract or laryngeal edema resulting from the inhalation of heated air; or

(c) Burns which may result in death,

shall promptly report that information to the appropriate local fire department.

2. The report required by subsection 1 must include:

(a) The name and address of the person treated, if known;

(b) The location of the person treated; and

(c) The character and extent of his injuries.

3. A person required to make a report pursuant to subsection 1 shall, within 3 working days after treating the person, submit a written report to:

(a) The appropriate local fire department in counties whose population is 40,000 or more; or

(b) The state fire marshal in counties whose population is less than 40,000.

The report must be on a form provided by the state fire marshal.

4. A provider of health care, his agents and employees are immune from any civil action for any disclosures made in good faith in accordance with the provisions of this section or any consequential damages.

**NEW HAMPSHIRE**

*Summary: Mandatory reporting is not required. There is a requirement that gunshot wounds and other injuries caused by criminal acts be reported; however, there is an exception for sexual assault victims 18 years and older not also suffering from a gunshot wound or other serious bodily injury. The Department of Justice pays for the medical services as long as the responsibility is not up to a third party or under a health insurance policy and the examination is done to gather evidence of the crime.*

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**STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS****RSA § 21-M:8-c. Victim of Alleged Sexual Offense**

If a physician or a hospital provides any physical examination of a victim of an alleged sexual offense to gather information and evidence of the alleged crime, these services shall be provided without charge to the individual. Upon submission of appropriate documentation, the physician or hospital shall be reimbursed for the cost of such examination by the department of justice to the extent such costs are not the responsibility of a third party under a health insurance policy or similar third party obligation. The bill for the medical examination of a sexual assault victim shall not be sent or given to the victim or the family of the victim. The privacy of the victim shall be maintained to the extent possible during third party billings. Billing forms shall be subject to the same principles of confidentiality applicable to any other medical record under RSA 151:13. Where such forms are released for statistical or accounting services, all personal identifying information shall be deleted from the forms prior to release.

**REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS****RSA § 631:6. Failure to Report Injuries**

I. Except as provided in paragraph II, a person is guilty of a misdemeanor if, having knowingly treated or assisted another for a gunshot wound or for any other injury he believes to have been caused by a criminal act, he fails immediately to notify a law enforcement official of all the information he possesses concerning the injury.

II. A person who has rendered treatment or assistance is excepted from the reporting provisions of paragraph I if the person seeking or receiving treatment or other assistance: (a) is 18 years of age or

older, (b) has been a victim of a sexual assault offense or abuse as defined in RSA 173-B:1, and (c) objects to the release of any information to law enforcement officials. This exception shall not apply if the sexual assault or abuse victim is also being treated for a gunshot wound or other serious bodily injury.

III. [Repealed.]

## NEW JERSEY

***Summary: There is no requirement to report sexual assault. It is mandatory to report gunshot wounds, stab wounds, wounds caused by weapons and certain burns. There is a Statewide Sexual Assault Nurse Examiner Program Fund.***

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS<sup>8</sup>

#### **N.J. Stat. § 26:2H-12.6c. Provision of emergency care to sexual assault victim**

An emergency health care facility shall provide emergency care to a sexual assault victim. It shall be the standard of care for an emergency health care facility to:

- a. provide each sexual assault victim with medically and factually accurate and objective oral and written information about emergency contraception and sexually transmitted diseases, as provided for in section 4 of this act;
- b. orally inform each sexual assault victim of her option to be provided emergency contraception at the health care facility; and
- c. provide emergency contraception to the sexual assault victim, upon her request, unless contraindicated. If the emergency contraceptive is in the form of pills, the provision of the emergency contraception shall include the initial dose that the victim may take at the emergency health care facility, as well as the follow-up dose that the victim can self-administer later.

An emergency health care facility shall not be required to provide emergency contraception to a sexual assault victim who is pregnant.

#### **N.J. Stat. § 52:4B-59. "Statewide Sexual Assault Nurse Examiner Program Fund"**

There is hereby established the "Statewide Sexual Assault Nurse Examiner Program Fund" as a nonlapsing, revolving fund. This fund shall be administered by the Attorney General, and all

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<sup>8</sup> Note that the NJ protocol, *Standards for Providing Services to Victims of Sexual Assault*, Standard 5, specifically states "Incidents of adult sexual assault which do not involve the use of a weapon or result in certain injuries, see N.J.S.A. 2C:58-8, are not required to be reported to any law enforcement agency by hospital personnel. An adult victim of sexual assault who is eligible for SART services has the option of obtaining those services without reporting the incident to law enforcement."

moneys deposited therein pursuant to section 11 of P.L. 2001, c. 81 (C. 2C:43-3.6) shall be used in accordance with guidelines established by the Attorney General for the operational expenses of the sexual assault nurse examiner program in each county. This fund shall be used in coordination with and in supplementation of any available federal funding under the "Victims of Crime Act of 1984," 42 U.S.C. § 10601 et seq., or any other grant funding for this purpose.

**REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS**

**N.J. Stat. § 2C:58-8. Certain wounds and injuries to be reported**

a. Every case of a wound, burn or any other injury arising from or caused by a firearm, destructive device, explosive or weapon shall be reported at once to the police authorities of the municipality where the person reporting is located or to the State Police by the physician consulted, attending or treating the case or the manager, superintendent or other person in charge, whenever such case is presented for treatment or treated in a hospital, sanitarium or other institution. This subsection shall not, however, apply to wounds, burns or injuries received by a member of the armed forces of the United States or the State of New Jersey while engaged in the actual performance of duty.

b. Every case which contains the criteria defined in this subsection shall be reported at once to the police authorities of the municipality where the person reporting is located, or to the Division of State Police, by the physician consulted, attending, or treating the injury, or by the manager, superintendent, or other person in charge, whenever such case is presented for treatment or treated in a hospital, sanitarium or any other institution, facility, or office where medical care is provided. This subsection shall not apply to injuries received by a member of the armed forces of the United States or the State of New Jersey while engaged in the actual performance of duty.

The defined criteria shall consist of a flame burn injury accompanied by one or more of the following factors:

- (1) A fire accelerant was used in the incident causing the injury and the presence of an accelerant creates a reasonable suspicion that the patient committed arson in violation of N.J.S. 2C:17-1.
- (2) Treatment for the injury was sought after an unreasonable delay of time.
- (3) Changes or discrepancies in the account of the patient or accompanying person concerning the cause of the injury which creates a reasonable suspicion that the patient committed arson in violation of N.J.S. 2C:17-1.

(4) Voluntary statement by the patient or accompanying person that the patient was injured during the commission of arson in violation of N.J.S. 2C:17-1.

(5) Voluntary statement by the patient or accompanying person that the patient was injured during a suicide attempt or the commission of criminal homicide in violation of N.J.S. 2C:11-1.

(6) Voluntary statement by the patient or accompanying person that the patient has exhibited fire setting behavior prior to the injury or has received counseling for such behavior.

(7) Any other factor determined by the bureau of fire safety in the Department of Community Affairs from information in the burn patient arson registry established under section 4 of P.L.1991, c.433 (C.52:27D-25d3) to typify a patient whose injuries were caused during the commission of arson in violation of N.J.S. 2C:17-1.

## NEW MEXICO

*Summary: New Mexico requires medical staff to note that a rape has occurred but not to report the rape to law enforcement. Victims are entitled to free forensic examinations.*

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **N.M. Stat. Ann. § 29-11-7. Free forensic medical exams for victims of sexual crimes**

The administrator shall:

- A. provide free forensic medical exams to victims of sexual crimes;
- B. arrange for victims of sexual crimes to obtain free forensic medical exams; or
- C. reimburse victims of sexual crimes for the cost of forensic medical exams, provided that:

(1) the reimbursement covers the full cost of the forensic medical exam, without any deductible requirement or limit on the amount of the reimbursement;

(2) the victim of a sexual crime is entitled to apply for reimbursement for a period of one year from the date of the forensic medical exam;

(3) reimbursement is provided not later than ninety days after the administrator receives written notification of the expense incurred by the victim for the forensic medical exam; and

(4) all victims of sexual crimes, including victims with limited or no English proficiency, are provided with information at the time of the forensic medical exam regarding how to obtain reimbursement for the cost of the exam.

**NEW YORK**

***Summary: There is no requirement to report rape in New York. There is a requirement to report wounds caused by a gun, knife, ice pick or other sharp instrument as well as certain burn injuries. Sexual assault forensic examinations will be paid for when the crime is reported within a reasonable time.***

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**STATUTES AFFECTING SEXUAL ASSAULT EXAMINATIONS****NY CLS Pub Health § 2805-i. Treatment of sexual offense victims and maintenance of evidence in a sexual offense**

1. Every hospital providing treatment to alleged victims of a sexual offense shall be responsible for:

(a) maintaining sexual offense evidence and the chain of custody as provided in subdivision two of this section.

(b) contacting a rape crisis or victim assistance organization, if any, providing victim assistance to the geographic area served by that hospital to establish the coordination of non-medical services to sexual offense victims who request such coordination and services.

2. The sexual offense evidence shall be collected and kept in a locked separate and secure area for not less than thirty days unless: (a) such evidence is not privileged and the police request its surrender before that time, which request shall be complied with; or (b) such evidence is privileged and (i) the alleged sexual offense victim nevertheless gives permission to turn such privileged evidence over to the police before that time, or (ii) the alleged sexual offense victim signs a statement directing the hospital to not collect and keep such privileged evidence, which direction shall be complied with. The sexual offense evidence shall include, but not be limited to, slides, cotton swabs, clothing and other items. Where appropriate such items must be refrigerated and the clothes and swabs must be dried, stored in paper bags and labeled. Each item of evidence shall be marked and logged with a code number corresponding to the patient's medical record. The alleged sexual offense victim shall be notified that after thirty days, the refrigerated evidence will be discarded in compliance with state and local health codes and the alleged sexual offense victim's clothes will be returned to the alleged sexual offense victim upon request.

3. Upon admittance or commencement of treatment of the alleged sexual offense victim, the hospital shall advise the victim of the availability of the services of a local rape crisis or victim

assistance organization, if any, to accompany the victim through the sexual offense examination. If after receiving such advice the sexual offense victim wishes the presence of a rape crisis or victim assistance advocate, the hospital shall contact the appropriate organization and request that one be provided, provided, however, that if in the professional judgment of the treating practitioner a delay in treatment is detrimental to the provision of medical treatment, then examination or treatment need not be delayed pending the arrival of such advocate and further provided that the presence or continued presence of such advocate does not interfere with the provision of necessary medical care to the victim.

4. No hospital or treating practitioner shall be liable in civil damages for failing to comply with the requirements of subdivision one, two or three of this section or acting in good faith to provide treatment as provided in subdivision three of this section.

4-a. On and after April first, two thousand one, a hospital providing treatment to alleged victims of sexual offenses shall be eligible to receive from the division of criminal justice services, at no cost, sexual offense evidence collection kits.

4-b.

(a) The commissioner shall, with the consent of the directors of interested hospitals in the state and in consultation with the commissioner of the division of criminal justice services, designate hospitals in the state as the sites of a twenty-four hour sexual assault forensic examiner program. The hospital sites shall be designated in urban, suburban and rural areas to give as many state residents as possible ready access to the sexual assault forensic examiner program. The commissioner, in consultation with the commissioner of the division of criminal justice services, shall consider the following criteria when designating these sexual assault forensic examiner program sites:

- (1) the location of the hospital;
- (2) the hospital's capacity to provide on-site comprehensive medical services to victims of sexual offenses;
- (3) the capacity of the hospital site to coordinate services for victims of sexual offenses including medical treatment, rape crisis counseling, psychological support, law enforcement assistance and forensic evidence collection;
- (4) the hospital's capacity to provide access to the sexual assault forensic examiner site for disabled victims;
- (5) the hospital's existing services for victims of sexual offenses;
- (6) the capacity of the hospital site to collect uniform data and insure confidentiality of such data; and
- (7) the hospital's compliance with state and federally mandated standards of medical care.

(b) Each sexual assault forensic examiner program site designated pursuant to this subdivision shall

comply with the requirements of subdivisions one, two and three of this section, and shall also provide treatment to the victim as follows:

(1) The victim shall, absent exigent circumstances, be met by a sexual assault forensic examiner within sixty minutes of arriving at the hospital, who shall be a nurse practitioner, registered nurse or physician specially trained in forensic examination of sexual offense victims and the preservation of forensic evidence in such cases and certified as qualified to provide such services pursuant to regulations promulgated by the commissioner. Such program shall assure that such a specially-trained forensic examiner is on-call and available on a twenty-four hour a day basis every day of the year.

(2) An examination of the victim shall be performed promptly by such forensic examiner in a private room designated for such examinations. An obstetrician/gynecologist or other appropriate medical doctor shall be readily available to the forensic examiner if there is a need for more specialized medical evaluation or treatment.

(3) Promptly after the examination is completed, the victim shall be permitted to shower, be provided with a change of clothing, and receive follow-up information, counseling, medical treatment and referrals for same.

(c) Nothing in this subdivision shall affect the existence or continued existence of any program in this state through which a trained nurse practitioner, registered nurse or physician is providing appropriate forensic examinations and related services to survivors of sexual assault....

#### **NY CLS Exec § 631. Awards**

1. No award shall be made unless the board or board member, as the case may be, finds that (a) a crime was committed, (b) such crime directly resulted in personal physical injury to or the exacerbation of a preexisting disability, or condition, or death of, the victim, and (c) criminal justice agency records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the criminal justice agency records show that such report was made more than one week after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified; provided, however, in cases involving an alleged sex offense as contained in article one hundred thirty of the penal law or incest as defined in section 255.25 of the penal law or an offense chargeable as a family offense as described in section eight hundred twelve of the family court act or section 530.11 of the criminal procedure law, the criminal justice agency report need only be made within a reasonable time considering all the circumstances, including the victim's physical, emotional and mental condition and family situation. For the purposes of this subdivision, "criminal justice agency" shall include, but not be limited to, a police department, a district attorney's office, and any other governmental agency having responsibility for the enforcement of the criminal laws of the state provided, however, that in cases involving such sex offense a criminal justice agency shall also mean a family court, a governmental agency responsible for child and/or adult protective services pursuant to [fig 1] title six of article six of the social services law and/or [fig

2] title one of article nine-B of the social services law, and any medical facility established under the laws of the state that provides a forensic physical examination for victims of rape and sexual assault.

1-a. No award shall be made for a frivolous lawsuit unless the board or board member, as the case may be, finds that the victim has been awarded costs pursuant to section eighty-three hundred three-a of the civil practice law and rules and the individual responsible for the payment of costs is unable to pay such costs provided, however, that in no event shall the amount of such costs exceed two thousand five hundred dollars.

2. Any award made pursuant to this article shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services necessary as a result of the injury upon which the claim is based; loss of earnings or support resulting from such injury not to exceed thirty thousand dollars; burial expenses not exceeding six thousand dollars of a victim who died as a direct result of a crime; the costs of crime scene cleanup and securing of a crime scene not exceeding twenty-five hundred dollars; reasonable relocation expenses not exceeding twenty-five hundred dollars; and the unreimbursed cost of repair or replacement of articles of essential personal property lost, damaged or destroyed as a direct result of the crime. In addition to the medical or other services necessary as a result of the injury upon which the claim is based, an award may be made for rehabilitative occupational training for the purpose of job retraining or similar employment-oriented rehabilitative services based upon the claimant's medical and employment history. For the purpose of this subdivision, rehabilitative occupational training shall include but not be limited to educational training and expenses. An award for rehabilitative occupational training may be made to a victim, or to a family member of a victim where necessary as a direct result of a crime.

3. Any award made for loss of earnings or support shall, unless reduced pursuant to other provisions of this article, be in an amount equal to the actual loss sustained, provided, however, that no such award shall exceed six hundred dollars for each week of lost earnings or support [fig 1] . Awards with respect to livery operator victims pursuant to paragraph (b) of subdivision six of section six hundred twenty-seven of this article shall be granted in the amount and in the manner provided therein. The aggregate award for all such [fig 2] losses pursuant to this subdivision, including any awards made pursuant to paragraph (b) of subdivision six of section six hundred twenty-seven of this article, shall not exceed thirty thousand dollars. If there are two or more persons entitled to an award as a result of the death of a person which is the direct result of a crime, the award shall be apportioned by the board among the claimants.

4. Any award made pursuant to this article shall be reduced by the amount of any payments received or to be received by the claimant as a result of the injury (a) from or on behalf of the person who committed the crime, (b) under insurance programs mandated by law, (c) from public funds, (d) under any contract of insurance wherein the claimant is the insured or

beneficiary, (e) as an emergency award pursuant to section six hundred thirty of this article. Notwithstanding the foregoing, where the person injured is a livery operator victim, because undue hardship may result to the claimant if immediate payment is not made, any award pursuant to paragraph (b) of subdivision six of section six hundred twenty-seven of this article shall be granted without reduction for workers' compensation benefits to be received, if any.

5. (a) In determining the amount of an award, the board or board member, as the case may be, shall determine whether, because of his conduct, the victim of such crime contributed to the infliction of his injury, and the board or board member shall reduce the amount of the award or reject the claim altogether, in accordance with such determination.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, the board or board member, as the case may be, shall disregard for this purpose the responsibility of the victim for his own injury where the record shows that the person injured was acting as a good samaritan, as defined in this article.

(c) Notwithstanding any inconsistent provision of this article, where the person injured acted as a good samaritan, the board or board member, as the case may be, may, without regard to the financial difficulty of the claimant, make an award for out-of-pocket losses. Such award may also include compensation for any loss of property up to five thousand dollars suffered by the victim during the course of his actions as a good samaritan.

(d) Notwithstanding any inconsistent provision of this article, where a person acted as a good samaritan, and was killed as a direct result of the crime, the board or the board member, as the case may be, may, without regard to the financial difficulty of the claimant, make a lump sum award to such claimant for actual loss of support not to exceed [fig 1] thirty thousand dollars.

(e) Notwithstanding any inconsistent provision of this article, where a police officer or firefighter, both paid and volunteer, dies from injuries received in the line of duty as a direct result of a crime, the board or the board member, as the case may be, may, without regard to the financial difficulty of the claimant, make an award for the unreimbursed counseling expenses of the eligible spouse, parents, brothers, sisters or children of such victim, and/or the reasonable burial expenses incurred by the claimant.

6. (a) Claims may be approved only if the board or board member, as the case may be, finds that unless the claimant's award is approved he will suffer financial difficulty. However, no finding of financial difficulty is required for a claim for an emergency award or an award less than five thousand dollars. In determining financial difficulty, the board or board member shall consider all relevant factors, including but not limited to:

- (1) the number of claimant's dependents;
- (2) reasonable living expenses of the claimant and his family;

- (3) any special health, rehabilitative or educational needs of the claimant and his dependents;
- (4) the claimant's employment situation including income and potential earning capacity;
- (5) the claimant's net financial resources after authorized deduction as provided in paragraphs (b) and (c) of this subdivision;
- (6) whether claimant's financial resources will become exhausted during his lifetime; and
- (7) the nature and the amount of claimant's total debt and liabilities, including the amount of debt incurred or to be incurred to pay for losses and expenses of the crime, and the extent to which claimant's essential assets will have to be liquidated.

(b) Claimant's net financial resources do not include the present value of future earnings, and shall be determined by the board by deducting from his total financial resources the value, within reasonable limits, of the following items:

- (1) a homestead, not exceeding [fig 1] five hundred thousand dollars, or a total of [fig 2] ten years' rent for a renter;
- (2) personal property consisting of clothing and strictly personal effects;
- (3) household furniture, appliances and equipment;
- (4) tools and equipment necessary for the claimant's trade, occupation or business;
- (5) a family automobile;
- (6) life insurance, except in death claims; and
- (7) retirement, education and health plans or contributions to a retirement or pension program including but not limited to contributions to: (i) employee profit sharing plans, (ii) employee money purchase plans, (iii) 401 (k) plans, (iv) simplified employee pensions (SEP), (v) individual retirement accounts (IRA), (vi) 403 (b) plans, (vii) 457 plans, (viii) Keogh plans, (self employed), and (ix) any other plan or account for which contributions are made primarily for retirement purposes.

(c) The board or board member, after taking into consideration the claimant's financial resources, may exempt that portion of the victim's or claimant's annual income required to meet reasonable living expenses and the value of inventory or other property necessary for the claimant's business or occupation or the production of income required to meet reasonable living expenses. In no event shall the aggregate value of exemptions under this paragraph exceed one hundred thousand dollars.

(d) Nothing contained in this subdivision shall be construed to mean that the board must maintain the same standard of living enjoyed by the claimant prior to the death or injury.

(e) The board shall establish such rules and regulations as are necessary for the implementation of this section.

7. Notwithstanding the provisions of subdivision six of this section, an award shall include out-of-pocket expenses, including indebtedness reasonably incurred by the victim of a sex offense or

the person responsible for the victim of such sex offense, as such sex offense is defined in article one hundred thirty of the penal law, for a hospital or medical examination in connection with the investigation or prosecution of any such offense.

8. Notwithstanding the provisions of subdivisions one, two and three of this section, an elderly or disabled victim who has not been physically injured as a direct result of a crime, shall only be eligible for an award that includes the unreimbursed cost of repair or replacement of essential personal property that has been lost, damaged or destroyed as a direct result of a crime, transportation expenses incurred for necessary court appearances in connection with the prosecution of such crimes and the unreimbursed cost of counselling provided to the elderly or disabled victim on account of mental or emotional stress or financial counselling provided to the elderly or disabled victim on account of financial difficulty resulting from the incident in which the crime occurred if such counselling or financial counselling is commenced within one year from the date of the incident.

9. Any award made for the cost of repair or replacement of essential personal property, including cash losses of essential personal property, shall be limited to an amount of [fig 1] five hundred dollars, except that all cash losses of essential personal property shall be limited to the amount of one hundred dollars.

10. Notwithstanding any contrary provision of law, an award shall include reasonable transportation expenses incurred for necessary court appearances in connection with the prosecution of such crimes upon which the claim is based.

11. Notwithstanding the provisions of subdivisions one, two and three of this section, an individual who was a victim of either the crime of unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, kidnapping in the second degree as defined in section 135.20 of the penal law or kidnapping in the first degree as defined in section 135.25 of the penal law who has not been physically injured as a direct result of such crime shall only be eligible for an award that includes loss of earnings or support and the unreimbursed costs of counseling provided to such victim on account of mental or emotional stress resulting from the incident in which the crime occurred.

12. Notwithstanding the provisions of subdivisions one, two and three of this section, an individual who was a victim of either the crime of menacing in the second degree as defined in subdivision two or three of section 120.14 of the penal law, menacing in the first degree as defined in section 120.13 of the penal law, harassment in the second degree as defined in subdivision two or three of section 240.26 of the penal law, harassment in the first degree as defined in section 240.25 of the penal law, aggravated harassment in the second degree as defined in subdivision four of section 240.30 of the penal law, aggravated harassment in the first degree as defined in subdivision two of section 240.31 of the penal law, criminal contempt in the

first degree as defined in paragraph (ii) or (iv) of subdivision (b) or subdivision (c) of section 215.51 of the penal law, or stalking in the fourth, third, second or first degree as defined in sections 120.45, 120.50, 120.55 and 120.60 of the penal law, respectively, who has not been physically injured as a direct result of such crime shall only be eligible for an award that includes loss of earning or support, the unreimbursed cost of repair or replacement of essential personal property that has been lost, damaged or destroyed as a direct result of such crime, the unreimbursed cost for security devices to enhance the personal protection of such victim, transportation expenses incurred for necessary court expenses in connection with the prosecution of such crime, the unreimbursed costs of counseling provided to such victim on account of mental or emotional stress resulting from the incident in which the crime occurred, reasonable relocation expenses, and for occupational or job training.

13. Notwithstanding any other provision of law, rule, or regulation to the contrary, when any New York state accredited hospital, accredited sexual assault examiner program, or licensed health care provider furnishes services to any sexual assault survivor, including but not limited to a health care forensic examination in accordance with the sex offense evidence collection protocol and standards established by the department of health, such hospital, sexual assault examiner program, or licensed healthcare provider shall provide such services to the person without charge and shall bill the board directly. The board, in consultation with the department of health, shall define the specific services to be covered by the sexual assault forensic exam reimbursement fee, which must include at a minimum forensic examiner services, hospital or healthcare facility services related to the exam, and related laboratory tests and pharmaceuticals. Follow-up HIV post-exposure prophylaxis costs shall continue to be reimbursed according to established board procedure. The board, in consultation with the department of health, shall also generate the necessary regulations and forms for the direct reimbursement procedure. The rate for reimbursement shall be eight hundred dollars, to be reviewed and adjusted annually by the board in consultation with the department of health. The hospital, sexual assault examiner program, or licensed health care provider must accept this fee as payment in full for these specified services. No additional billing of the survivor for said services is permissible. A sexual assault survivor may voluntarily assign any private insurance benefits to which she or he is entitled for the healthcare forensic examination, in which case the hospital or healthcare provider may not charge the board. A hospital, sexual assault examiner program or licensed health care provider shall, at the time of the initial visit, request assignment of any private health insurance benefits to which the sexual assault survivor is entitled on a form prescribed by the board; provided, however, such sexual assault survivor shall be advised orally and in writing that he or she may decline to provide such information regarding private health insurance benefits if he or she believes that the provision of such information would substantially interfere with his or her personal privacy or safety and in such event, the sexual assault forensic exam fee shall be paid by the board. Such sexual assault survivor shall also be advised that providing such information may provide additional resources to pay for services to other sexual assault victims. If he or she declines to provide such health insurance information, he or she shall indicate such decision on

the form provided by the hospital, sexual assault examiner program or licensed health care provider, which form shall be prescribed by the board.

## REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

### **NY CLS Penal § 265.25. Certain wounds to be reported**

Every case of a bullet wound, gunshot wound, powder burn or any other injury arising from or caused by the discharge of a gun or firearm, and every case of a wound which is likely to or may result in death and is actually or apparently inflicted by a knife, icepick or other sharp or pointed instrument, shall be reported at once to the police authorities of the city, town or village where the person reporting is located by: (a) the physician attending or treating the case; or (b) the manager, superintendent or other person in charge, whenever such case is treated in a hospital, sanitarium or other institution. Failure to make such report is a class A misdemeanor. This subdivision shall not apply to such wounds, burns or injuries received by a member of the armed forces of the United States or the state of New York while engaged in the actual performance of duty.

**HISTORY:** Add, L 1965, ch 1030, § 1, eff Sept 1, 1967, with substance derived from § 1902(4).

### **NY CLS Penal § 265.26. Burn injury and wounds to be reported**

Every case of a burn injury or wound, where the victim sustained second or third degree burns to five percent or more of the body and/or any burns to the upper respiratory tract or laryngeal edema due to the inhalation of super-heated air, and every case of a burn injury or wound which is likely to or may result in death, shall be reported at once to the office of fire prevention and control. The state fire administrator shall accept the report and notify the proper investigatory agency. A written report shall also be provided to the office of fire prevention and control within seventy-two hours. The report shall be made by (a) the physician attending or treating the case; or (b) the manager, superintendent or other person in charge, whenever such case is treated in a hospital, sanitarium, institution or other medical facility.

The intentional failure to make such report is a class A misdemeanor.

## NORTH CAROLINA

***Summary: North Carolina does not have mandatory rape reporting. However, victims are only entitled to a free forensic medical examination if they report to law enforcement within five days of the assault and the examination is performed within five days of the assault. The 5-day requirement may be waived by the Secretary for "good cause". It is mandatory to report gunshot and stab wounds.***

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **N.C. Gen. Stat. § 143B-480.2. Victim assistance**

(a) Eligibility for Assistance. -- Sexual assault victims or victims of attempted sexual assault are eligible for assistance under this Program if the sexual assault or the attempted sexual assault is reported to a law enforcement officer within five days of the occurrence of the assault or the attempted sexual assault and if a forensic medical examination is performed within five days of the sexual assault or the attempted sexual assault. The Secretary may waive either five-day requirement for good cause. The term "sexual assault" as used in this section refers to the following crimes: first-degree rape as defined in G.S. 14-27.2, second-degree rape as defined in G.S. 14-27.3, first-degree sexual offense as defined in G.S. 14-27.4, second-degree sexual offense as defined in G.S. 14-27.5, or statutory rape as defined in G.S. 14-27.7A

(b) Eligible Expenses. -- Assistance is limited to the following expenses incurred by the victim:

(1) Immediate and short-term medical expenses.

(2) Ambulance services from the place of the attack to a place where medical treatment is provided.

(3) Mental health services provided by a professional licensed or certified by the State to provide such services.

(4) A forensic medical examination. As used in this section, the term "forensic medical examination" means an examination provided to a sexual assault victim eligible for assistance under subsection (a) of this section by medical personnel who gather evidence of a sexual assault in a manner suitable for use in a court of law. The examination should include an examination of physical trauma, a patient interview, and a collection and evaluation of evidence.

(5) Counseling treatment following the attack.

(c) Amount of Assistance. -- The Program shall pay for the full out-of-pocket cost of the victim's forensic medical examination. The Program shall pay for all other eligible expenses set out in subsection (b) of this section in an amount not to exceed the difference between the full out-of-pocket cost of the forensic medical examination and one thousand dollars (\$ 1,000). If the full out-of-pocket cost for the forensic medical examination costs more than one thousand dollars (\$ 1,000), then the Program shall pay only for the full out-of-pocket cost of the forensic medical examination. Assistance not to exceed fifty dollars (\$ 50.00) shall be provided to victims to replace clothing that was held for evidence tests.

(d) Payment Directly to Provider. -- With the exception of assistance authorized under subsection (f) of this section, assistance for expenses authorized under this section is to be paid directly to any hospital, ambulance service, attending physicians, or mental health professionals providing counseling, upon the filing of proper forms. Payment for the full out-of-pocket cost of the forensic medical examination shall be paid to the provider no later than 90 days after receiving the required written notification of the victim's expense.

(e) Judicial Review. -- Upon an adverse determination by the Secretary on a claim for medical expenses, a victim is entitled to judicial review of that decision. The person seeking review shall file a petition in the Superior Court of Wake County.

(f) Examinations by Licensed Registered Nurse. -- If the forensic medical examination is conducted by a licensed registered nurse who has successfully completed a program approved under G.S. 90-171.38(b), payment for the full out-of-pocket cost of the forensic medical examination may be made directly to the licensed registered nurse in lieu of any payment which may otherwise have been made under subsection (d) of this section. Payment for the full out-of-pocket costs of a forensic medical examination under this subsection shall be paid no later than 90 days after receiving the required written notification of the victim's expense. The Secretary shall adopt rules to facilitate the payments authorized under this subsection and to encourage, whenever practical, the use of licensed registered nurses trained under G.S. 90-171.38(b) to conduct medical examinations and procedures.

#### **N.C. Admin. Code tit. 14A, r. 11.0303 ALLOWABLE COSTS AND BENEFITS**

(a) Immediate costs. Payment for medical and hospital costs incurred within 72 hours of the incident and associated with the immediate diagnosis and medical treatment of a victim of rape or sexual offense, or an attempted rape or sexual offense will be authorized by the Director, Division of Victim and Justice Services, subject to the limitations of Rule .0304.

(b) Charges permitted include, but are not restricted to, the following:

- (1) hospital and emergency room;
- (2) professional services;
- (3) laboratory fees such as:

- (A) pelvic tray,
  - (B) physical evidence collection in a manner and with materials approved by the State Bureau of Investigation,
  - (C) venereal disease test,
  - (D) pregnancy test,
  - (E) sperm smear,
  - (F) blood alcohol test;
  - (4) hospital or professional services or both in connection with the immediate treatment of associated injuries;
  - (5) medications and drugs.
- (c) Short-term costs. Payment for medical and hospital costs incurred within 90 days of the incident associated with the short-term medical treatment of a victim of a rape or sexual offense, or an attempted rape or sexual offense, will be authorized by the Director, Division of Victim and Justice Services, subject to the limitations of Rule .0304. Charges permitted include, but are not restricted to, the following:
- (1) hospital room accommodation, including bed, board and general nursing care;
  - (2) professional services;
  - (3) laboratory fees such as:
    - (A) venereal disease tests,
    - (B) pregnancy test;
  - (4) medications and drugs;
  - (5) mental health services ordered by a licensed physician, subject to the prevailing state rates per visit for such services;
  - (6) ambulance services.
- (d) The Director, Division of Victim and Justice Services, may utilize program funds to purchase approved evidence collection kits.

## REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

### **N.C. Gen. Stat. § 90-21.20. Reporting by physicians and hospitals of wounds, injuries and illnesses**

(a) Such cases of wounds, injuries or illnesses as are enumerated in subsection (b) shall be reported as soon as it becomes practicable before, during or after completion of treatment of a person suffering such wounds, injuries, or illnesses. If such case is treated in a hospital, sanitarium or other medical institution or facility, such report shall be made by the Director, Administrator, or other person designated by the Director or Administrator, or if such case is treated elsewhere, such report shall be made by the physician or surgeon treating the case, to the chief of police or the police authorities of the city or town of this State in which the hospital or other institution, or place of treatment is located. If such hospital or other institution or place of

treatment is located outside the corporate limits of a city or town, then the report shall be made by the proper person in the manner set forth above to the sheriff of the respective county or to one of his deputies.

(b) Cases of wounds, injuries or illnesses which shall be reported by physicians, and hospitals include every case of a bullet wound, gunshot wound, powder burn or any other injury arising from or caused by, or appearing to arise from or be caused by, the discharge of a gun or firearm, every case of illness apparently caused by poisoning, every case of a wound or injury caused, or apparently caused, by a knife or sharp or pointed instrument if it appears to the physician or surgeon treating the case that a criminal act was involved, and every case of a wound, injury or illness in which there is grave bodily harm or grave illness if it appears to the physician or surgeon treating the case that the wound, injury or illness resulted from a criminal act of violence.

(c) Each report made pursuant to subsections (a) and (b) above shall state the name of the wounded, ill or injured person, if known, and the age, sex, race, residence or present location, if known, and the character and extent of his injuries.

(d) Any hospital, sanitarium, or other like institution or Director, Administrator, or other designated person, or physician or surgeon participating in good faith in the making of a report pursuant to this section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as the result of the making of such report.

## NORTH DAKOTA

*Summary: Mandatory reporting is not specifically required in North Dakota; however, wounds, injury or physical trauma caused in violation of any criminal law are required to be reported. Victims may only receive crime victims compensation if they report the sexual assault to the police within 72 hours, unless there is good cause shown for the delayed report.*

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **N.D. Cent. Code, § 54-23.4-06. Application for compensation - Awards - Limitations on awards.**

1. An applicant for an award of compensation shall apply in writing in a form that conforms substantially to that prescribed by the division. If a resident of this state is a victim of criminally injurious conduct, but the criminally injurious conduct occurred outside the geographical boundaries of this state, the resident has the same rights under this chapter as if the criminally injurious conduct occurred within this state upon a showing that the state, territory, country, or political subdivision of the country in which the criminally injurious conduct occurred does not have a crime victims compensation law which covers the bodily injury or death of the victim.
2. A claim for compensation must be filed within one year from the date the criminally injurious conduct was reported to a law enforcement officer. The division may extend the time for filing if it determines that the interests of justice so require. There is no appeal from a decision of the division not to extend the filing time, not to reopen, or not to reinvestigate a claim.
3. Compensation may not be awarded to a claimant who is the offender or an accomplice of the offender, nor to any claimant if the award would unjustly benefit the offender or an accomplice.
4. Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within seventy-two hours after its occurrence or the division finds there was good cause for the failure to report within that time. In the case of child abuse or sexual molestation of a child, the criminally injurious conduct must be reported to a law enforcement officer within three years after the child reaches the age of majority.
5. The division, upon finding that the claimant has not fully cooperated with appropriate law enforcement agencies, may deny, reconsider, or reduce an award of compensation.
6. Compensation otherwise payable to a claimant must be reduced or denied:
  - a. To the extent the economic loss upon which the claim is based is recouped from other

persons, including collateral sources;

b. To the extent the division deems reasonable because of the contributory misconduct of the claimant or of a victim on whose behalf compensation is claimed; and

c. To the extent the division deems reasonable when it is determined that a victim was under the influence of an alcoholic beverage or a controlled substance at the time the criminally injurious conduct occurred and the victim's intoxication was a factor causing the criminally injurious conduct.

7. Compensation for work loss, replacement services loss, dependent's economic loss, and dependent's replacement services loss may not exceed three hundred dollars per week.

8. Compensation payable to a victim and to all other claimants sustaining economic loss because of injury to or death of that victim may not exceed twenty-five thousand dollars in the aggregate. If a resident of this state is the victim of criminally injurious conduct outside the geographical boundaries of this state and the total amount of crime victims compensation benefits payable where the criminally injurious conduct occurred is less than twenty-five thousand dollars, the division may pay additional compensation to the victim. The maximum additional compensation the division may pay is the difference between twenty-five thousand dollars and the total amount of crime victims compensation benefits payable where the criminally injurious conduct occurred.

## REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

### **N.D. Cent. Code, § 43-17-41. Duty of physicians and others to report injury -- Penalty**

1. Any physician, physician assistant, or any individual licensed under chapter 43-12.1 who performs any diagnosis or treatment for any individual suffering from any wound, injury, or other physical trauma:

a. Inflicted by the individual's own act or by the act of another by means of a knife, gun, or pistol shall as soon as practicable report the wound, injury, or trauma to a law enforcement agency in the county in which the care was rendered; or

b. Which the individual performing diagnosis or treatment has reasonable cause to suspect was inflicted in violation of any criminal law of this state, shall as soon as practicable report the wound, injury, or trauma to a law enforcement agency in the county in which the care was rendered.

2. The report under subsection 1 must state the name of the injured individual and the character and extent of the individual's injuries.

3. When a report of domestic violence, as defined in section 14-07.1-01, or a report of physical injury resulting from a sexual offense, as defined in chapter 12.1-20, is made to a law enforcement agency as required by this section, the injured individual must be provided with information regarding a domestic violence sexual assault organization as defined in section 14-07.1-01 or other victims' assistance program by the physician, physician assistant, or any individual licensed under chapter 43-12.1, unless it is known that the information has previously been provided to the injured individual.
4. The reports mandated by this section must be made as soon as practicable and may be either oral or in writing. Oral reports must be followed by written reports within forty-eight hours if so requested by the sheriff or state's attorney to whom the oral report is originally made.
5. Any individual required to report as provided by this section who willfully fails to do so is guilty of an infraction.
6. Any individual making or not making a report in good faith pursuant to this section is immune from liability for making or not making a report.

**OHIO**

*Summary: Mandatory reporting of rape by medical personnel is not specifically required; however, gunshot wounds, stab wounds, serious physical harm that there is reason to believe resulted from an offense of violence and second degree burns or higher must be reported. Note that it is a misdemeanor for any person having knowledge that a felony has been committed to knowingly fail to report it. Hospitals and medical facilities can be reimbursed for doing forensic examinations when they are done for the purpose of gathering physical evidence for a possible prosecution.*

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**STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS****ORC Ann. § 2907.28. Payment of cost of medical examination and test of victim or accused**

(A) Any cost incurred by a hospital or emergency medical facility in conducting a medical examination of a victim of an offense under any provision of sections 2907.02 to 2907.06 of the Revised Code for the purpose of gathering physical evidence for a possible prosecution, including the cost of any antibiotics administered as part of the examination, shall be paid out of the reparations fund established pursuant to section 2743.191[2743.19.1] of the Revised Code, subject to the following conditions:

(1) The hospital or emergency facility shall follow a protocol for conducting such medical examinations that is identified by the attorney general in rule adopted in accordance with Chapter 119. of the Revised Code.

(2) The hospital or emergency facility shall submit requests for payment to the attorney general on a monthly basis, through a procedure determined by the attorney general and on forms approved by the attorney general. The requests shall identify the number of sexual assault examinations performed and shall verify that all required protocols were met for each examination form submitted for payment in the request.

(3) The attorney general shall review all requests for payment that are submitted under division (A)(2) of this section and shall submit for payment as described in division (A)(5) of this section all requests that meet the requirements of this section.

(4) The hospital or emergency facility shall accept a flat fee payment for conducting each examination in the amount determined by the attorney general pursuant to Chapter 119. of the Revised Code as payment in full for any cost incurred in conducting a medical examination and test

of a victim of an offense under any provision of sections 2907.02 to 2907.06 of the Revised Code for the purpose of gathering physical evidence for a possible prosecution of a person. The attorney general shall determine a flat fee payment amount to be paid under this division that is reasonable.

(5) In approving a payment under this section, the attorney general shall order the payment against the state. The payment shall be accomplished only through the following procedure, and the procedure may be enforced through a mandamus action and a writ of mandamus directed to the appropriate official:

(a) The attorney general shall provide for payment in the amount set forth in the order.

(b) The expense of the payment of the amount described in this section shall be charged against all available unencumbered moneys in the reparations fund.

(B) No costs incurred by a hospital or emergency facility in conducting a medical examination and test of any victim of an offense under any provision of sections 2907.02 to 2907.06 of the Revised Code for the purpose of gathering physical evidence for a possible prosecution of a person shall be billed or charged directly or indirectly to the victim or the victim's insurer.

(C) Any cost incurred by a hospital or emergency medical facility in conducting a medical examination and test of any person who is charged with a violation of division (B) of section 2903.11 or of section 2907.02, 2907.03, 2907.04, 2907.05, 2907.24, 2907.241 [2907.21.1] or 2907.25 of the Revised Code or with a violation of a municipal ordinance that is substantially equivalent to that division or any of those sections, pursuant to division (B) of section 2907.27 of the Revised Code, shall be charged to and paid by the accused who undergoes the examination and test, unless the court determines that the accused is unable to pay, in which case the cost shall be charged to and paid by the municipal corporation in which the offense allegedly was committed, or charged to and paid by the county if the offense allegedly was committed within an unincorporated area. If separate counts of an alleged offense or alleged separate offenses under section 2907.02, 2907.03, 2907.04, 2907.05, 2907.241 [2907.21.1] or 2907.25 of the Revised Code or under a municipal ordinance that is substantially equivalent to any of those sections took place in more than one municipal corporation or more than one unincorporated area, or both, the local governments shall share the cost of the examination and test. If a hospital or other emergency medical facility has submitted charges for the cost of a medical examination and test to an accused and has been unable to collect payment for the charges after making good faith attempts to collect for a period of six months or more, the cost shall be charged to and paid by the appropriate municipal corporation or county as specified in division (C) of this section.

### **Ohio Admin. Code § 109:7-1-01 Sexual assault examination protocol**

When conducting a medical examination of a victim of an offense under any provision of section 2907.02 to 2907.06 of the Revised Code for the purpose of gathering physical evidence for a possible prosecution, including the cost of any antibiotics administered as part of the examination, a hospital, child abuse clinic, or other emergency medical facility shall follow the protocol designated in this rule and shall only use a sexual assault evidence collection kit that meets that protocol in order to qualify for payment from the reparations fund established pursuant to section 2743.191 of the Revised Code. The protocol shall be as follows:

(A) For victims other than children, the hospital or other emergency medical facility shall follow the protocol adopted by the Ohio department of health.

(B) For victims who are children, the hospital, child abuse center, or other emergency medical facility shall follow the protocol adopted by the committee on child abuse and neglect of the Ohio chapter of the American [sic.] Academy of Pediatrics.

**Ohio Admin. Code § 109:7-1-02 Sexual assault examination payment amount**

A hospital, child abuse clinic, or other emergency medical facility shall accept a flat fee payment of five hundred dollars as payment in full for any cost incurred in conducting a medical examination and test of a victim of an offense under any provision of sections 2907.02 to 2907.06 of the Revised Code for the purpose of gathering physical evidence for a possible prosecution of a person, including the cost of any antibiotics administered as part of the examination.

The attorney general may increase the payment amount for inflation by a reasonable percentage according to the consumer price index (all urban consumers, all items) prepared by the bureau of labor statistics of the United States [sic.] Department of Labor.

HISTORY: 2000-2001 OMR 18 (E), eff. 8-10-00

**REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS**

**ORC Ann. § 2921.22. Failure to report a crime or knowledge of a death or burn injury**

(A) No person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities.

(B) Except for conditions that are within the scope of division (E) of this section, no physician, limited practitioner, nurse, or other person giving aid to a sick or injured person shall negligently fail to report to law enforcement authorities any gunshot or stab wound treated or observed by the physician, limited practitioner, nurse, or person, or any serious physical harm to persons that the physician, limited practitioner, nurse, or person knows or has reasonable cause to believe resulted from an offense of violence.

(C) No person who discovers the body or acquires the first knowledge of the death of a person shall fail to report the death immediately to a physician whom the person knows to be treating the deceased for a condition from which death at such time would not be unexpected, or to a law enforcement officer, an ambulance service, an emergency squad, or the coroner in a political subdivision in which the body is discovered, the death is believed to have occurred, or knowledge concerning the death is obtained.

(D) No person shall fail to provide upon request of the person to whom a report required by division (C) of this section was made, or to any law enforcement officer who has reasonable cause to assert the authority to investigate the circumstances surrounding the death, any facts within the person's knowledge that may have a bearing on the investigation of the death.

(E) (1) As used in this division, "burn injury" means any of the following:

(a) Second or third degree burns;

(b) Any burns to the upper respiratory tract or laryngeal edema due to the inhalation of superheated air;

(c) Any burn injury or wound that may result in death;

(d) Any physical harm to persons caused by or as the result of the use of fireworks, novelties and trick noisemakers, and wire sparklers, as each is defined by section 3743.01 of the Revised Code.

(2) No physician, nurse, or limited practitioner who, outside a hospital, sanitarium, or other medical facility, attends or treats a person who has sustained a burn injury that is inflicted by an explosion or other incendiary device or that shows evidence of having been inflicted in a violent, malicious, or criminal manner shall fail to report the burn injury immediately to the local arson, or fire and explosion investigation, bureau, if there is a bureau of this type in the jurisdiction in which the person is attended or treated, or otherwise to local law enforcement authorities.

(3) No manager, superintendent, or other person in charge of a hospital, sanitarium, or other medical facility in which a person is attended or treated for any burn injury that is inflicted by an explosion or other incendiary device or that shows evidence of having been inflicted in a violent, malicious, or criminal manner shall fail to report the burn injury immediately to the local arson, or fire and explosion investigation, bureau, if there is a bureau of this type in the jurisdiction in which the person is attended or treated, or otherwise to local law enforcement authorities.

(4) No person who is required to report any burn injury under division (E)(2) or (3) of this section shall fail to file, within three working days after attending or treating the victim, a written report of

the burn injury with the office of the state fire marshal. The report shall comply with the uniform standard developed by the state fire marshal pursuant to division (A)(15) of section 3737.22 of the Revised Code.

(5) Anyone participating in the making of reports under division (E) of this section or anyone participating in a judicial proceeding resulting from the reports is immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of such actions. Notwithstanding section 4731.22 of the Revised Code, the physician-patient relationship is not a ground for excluding evidence regarding a person's burn injury or the cause of the burn injury in any judicial proceeding resulting from a report submitted under division (E) of this section.

(F) (1) Any doctor of medicine or osteopathic medicine, hospital intern or resident, registered or licensed practical nurse, psychologist, social worker, independent social worker, social work assistant, professional clinical counselor, or professional counselor who knows or has reasonable cause to believe that a patient or client has been the victim of domestic violence, as defined in section 3113.31 of the Revised Code, shall note that knowledge or belief and the basis for it in the patient's or client's records.

(2) Notwithstanding section 4731.22 of the Revised Code, the doctor-patient privilege shall not be a ground for excluding any information regarding the report containing the knowledge or belief noted under division (F)(1) of this section, and the information may be admitted as evidence in accordance with the Rules of Evidence.

(G) Divisions (A) and (D) of this section do not require disclosure of information, when any of the following applies:

(1) The information is privileged by reason of the relationship between attorney and client; doctor and patient; licensed psychologist or licensed school psychologist and client; member of the clergy, rabbi, minister, or priest and any person communicating information confidentially to the member of the clergy, rabbi, minister, or priest for a religious counseling purpose of a professional character; husband and wife; or a communications assistant and those who are a party to a telecommunications relay service call.

(2) The information would tend to incriminate a member of the actor's immediate family.

(3) Disclosure of the information would amount to revealing a news source, privileged under section 2739.04 or 2739.12 of the Revised Code.

(4) Disclosure of the information would amount to disclosure by a member of the ordained clergy of an organized religious body of a confidential communication made to that member of the clergy in that member's capacity as a member of the clergy by a person seeking the aid or counsel of that

member of the clergy.

(5) Disclosure would amount to revealing information acquired by the actor in the course of the actor's duties in connection with a bona fide program of treatment or services for drug dependent persons or persons in danger of drug dependence, which program is maintained or conducted by a hospital, clinic, person, agency, or organization certified pursuant to section 3893.06 of the Revised Code.

(6) Disclosure would amount to revealing information acquired by the actor in the course of the actor's duties in connection with a bona fide program for providing counseling services to victims of crimes that are violations of section 2907.02 or 2907.05 of the Revised Code or to victims of felonious sexual penetration in violation of former section 2907.12 of the Revised Code. As used in this division, "counseling services" include services provided in an informal setting by a person who, by education or experience, is competent to provide those services.

(H) No disclosure of information pursuant to this section gives rise to any liability or recrimination for a breach of privilege or confidence.

(I) Whoever violates division (A) or (B) of this section is guilty of failure to report a crime. Violation of division (A) of this section is a misdemeanor of the fourth degree. Violation of division (B) of this section is a misdemeanor of the second degree.

(J) Whoever violates division (C) or (D) of this section is guilty of failure to report knowledge of a death, a misdemeanor of the fourth degree.

(K) (1) Whoever negligently violates division (E) of this section is guilty of a minor misdemeanor.

(2) Whoever knowingly violates division (E) of this section is guilty of a misdemeanor of the second degree.

## OKLAHOMA

*Summary: Medical personnel are not required to report rape; however, a statute was recently passed stating that it is an option to report it if the victim requests it. In addition, many hospitals interpret 10 Okl. St. § 7104 as requiring a report. Sexual assault examinations are paid for by the Crime Victims Compensation Board upon application by the victim and approval by a District Attorney or Assistant District Attorney.*

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **21 Okl. St. § 142.20. Sexual Assault Examination Fund--Establishment**

A. A Sexual Assault Examination Fund shall be established for the purpose of providing to a victim of a sexual assault a medical examination by a qualified licensed health care professional for the procurement of evidence to aid in the investigation and prosecution of a sexual assault offense and to provide to the victim medications as directed by said health care professional. Pursuant to this subsection, medications provided to the victim by said health care professional shall only be provided to said victim on a one-time basis for the immediate trauma and medical examination of the victim.

B. As used in this section:

1. "Sexual assault" means:

a. Rape, or rape by instrumentation, as defined in Sections 1111, 1111.1 and 1114 of this title, or

b. Forcible sodomy, as defined in Section 888 of this title; and

2. "Qualified licensed health care professional" means a physician, registered nurse, or other licensed health care professional qualified by training and experience to perform sexual assault examinations.

C. The Crime Victims Compensation Board is authorized to pay for this examination and the medications directed by the qualified licensed health care professional upon application submitted by the victim of a sexual assault and approved by the district attorney or assistant district attorney who has jurisdiction over the prosecution of the sexual assault offense.

D. The Crime Victims Compensation Board shall establish the procedures for disbursement of the Sexual Assault Examination Fund, but in no event shall the Crime Victims Compensation Board pay an amount to exceed:

1. Two Hundred Fifty Dollars (\$ 250.00) for a sexual assault examination; and
2. Fifty Dollars (\$ 50.00) for medications which are related to the sexual assault and directed and deemed necessary by said health care professional.

Such payments shall not exceed the amounts specified by this subsection regardless of the amount of any individual bills comprising the claim. Payments shall be made only upon claims submitted by the victim and approved by the district attorney or assistant district attorney.

E. The District Attorneys Council is hereby authorized to transfer up to Two Hundred Seventy-five Thousand Dollars (\$ 275,000.00) from the Crime Victims Compensation Fund to the Sexual Assault Examination Fund for the payment of sexual assault forensic examinations and medications, pursuant to this section.

**OAC 185:15-1-1. Purpose**

The purpose of the Sexual Assault Examination Fund is to provide the victim of sexual assault with a forensic medical examination for the procurement of evidence to aid in the investigation and prosecution of a sexual assault offense and to provide to the victim medications as directed by the medical authority conducting the examination. Medications provided to the victim by the medical authority conducting the examination may only be provided to said victim on a one-time initial basis for the immediate trauma and medical examination of said victim. In no event shall payment from the Sexual Assault Examination Fund exceed the statutory maximum. The effective date of the Act authorizing the Sexual Assault Examination Fund was July 1, 1981.

**OAC 185:15-1-2. Definitions**

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise.

"Fund" means the Sexual Assault Examination Fund as established in Title 21 of the Oklahoma Statutes, Sections 142.19 and 142.20.

"Qualified Registered Nurse" To be considered qualified to perform a forensic sexual assault examination and receive payment through the Sexual Assault Examination Fund, Registered Nurses must be registered with the State Board of Nurse Registration and receive at least 40 hours

of in-service training in the field of forensic evidence collection and rape trauma.

"Sexual assault" means:

(A) rape or rape by instrumentation, as defined in Title 21 of the Oklahoma Statutes; or

(B) forcible sodomy, as defined in Title 21 of the Oklahoma Statutes.

"Sexual assault forensic examination" means procedures performed by a physician or a Qualified Registered Nurse to collect from the body of the victim, evidence of the sexual assault. This may include vaginal swabbing, vaginal wash, taking of blood samples, pubic combing, and any other procedures requested by the investigating law enforcement agency to obtain evidence of the crime of sexual assault.

### **OAC 185:15-1-3. Application by victim**

(a) In order to be eligible for payment by the fund for expenses of a sexual assault forensic examination, the victim of the crime must sign, prior to the examination, the portion of the Official Sexual Assault Examination Application provided by the Oklahoma Crime Victims Compensation Board. If the victim is under the age of 18, or under the supervision of a legal guardian, the parent or guardian of the victim must sign the application form.

(b) The victim's application must be accompanied by a copy of an itemized statement from the medical facility where the examination was conducted and/or from the Physician or Qualified Registered Nurse, if applicable.

(c) Should medications be prescribed by the medical authority conducting the sexual assault examination, a receipt will be required prior to reimbursement of said medication. Medication fees may be included in the hospital bill, providing the medication was dispensed at the hospital.

### **OAC 185:15-1-4. Duties of the physician or qualified registered nurse**

(a) The physician or qualified registered nurse who conducts the forensic examination of the victim must complete and sign the portion of the Official Application for Sexual Assault Examination Payment designated "Examining Physician or Qualified Registered Nurse."

(b) The physician or qualified registered nurse is responsible for collecting the evidence in a professional manner and preserving the evidence for shipment to a law enforcement forensic laboratory in the manner designated by the law enforcement officer in charge of investigating the sexual assault of the victim.

**OAC 185:15-1-6. Insurance**

(a) The payment of a sexual assault examination will be made, regardless of whether the victim is medically insured, providing said examination is approved by the District Attorney or an authorized Assistant District Attorney in the jurisdiction where the sexual assault occurred.

(b) In order to provide anonymity to the sexual assault victim and maintain confidentiality, any victim who has obtained a forensic sexual assault examination, will not be required to provide information to the Board relative to employment or insurance; and, shall not be required to file a claim with any private insurance company for the payment of a forensic sexual assault examination.

(c) If the victim or claimant chooses to file an insurance claim for the sexual assault examination, reimbursement should be made to the Sexual Assault Examination Fund upon payment from the insurance company.

(d) For sexual assault exams performed on adults and children, Medicaid or any other federally funded program is considered a collateral source and payment will not be made unless the denial of benefits is provided.

**OAC 185:15-1-6. Limitation of payment by the fund**

(a) In all cases, the maximum payment by the fund for any one forensic sexual assault examination shall not exceed the statutory maximum.

(b) Payments from the Fund shall be made directly to the medical facility where the examination was performed.

(c) Under no circumstances shall the Fund make any payment for the expenses of medical treatment of the victim, or for any other expense other than the expense of the forensic sexual assault examination, unless authorized by statute.

(d) In the event there is a fee from the physician or a qualified registered nurse, as well as a bill from the hospital, the statutory maximum shall be prorated between both service providers if both bills are submitted at the same time.

**REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS**

**10 Okl. St. § 7104. Report of criminally inflicted injuries<sup>9</sup>**

Any physician, surgeon, resident, intern, physician's assistant, registered nurse, or any other health care professional examining, attending, or treating the victim of what appears to be criminally injurious conduct, including, but not limited to, child physical or sexual abuse, as defined by the Oklahoma Crime Victims Compensation Act, shall report orally or by telephone the matter promptly to the nearest law enforcement agency in the county wherein the criminally injurious conduct occurred, or if the location where the conduct occurred is unknown, the report shall be made to the law enforcement agency nearest to the location where the injury is treated.

However, criminally injurious conduct which appears to be or is reported by the victim to be domestic abuse, as defined in Section 60.1 of Title 22 of the Oklahoma Statutes, domestic abuse by strangulation, domestic abuse resulting in great bodily harm, or domestic abuse in the presence of a minor child, as defined in Section 644 of Title 21 of the Oklahoma Statutes, shall be reported according to the standards for reporting as set forth in the Domestic Abuse Reporting Act and Sections 3 and 4 of this act.

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<sup>9</sup>Note that this statute appears in Chapter 71 of Title 10 which is Oklahoma's Child Abuse Reporting and Prevention Act.

## OREGON

*Summary: There is no mandatory reporting requirement in Oregon. Examination must be completed within 168 hours and use of the Oregon State Police SAFE kit must have been authorized by law enforcement. Injuries caused by a knife, gun, pistol or other deadly weapon must be reported.*

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### REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

#### **ORS § 146.710. Definition for ORS 146.710 to 146.780.**

As used in ORS 146.710 to 146.780, "injury" means a physical injury caused by a knife, gun, pistol or other deadly weapon.

#### **ORS § 146.730. Investigation.**

An investigation of an injury may be made by a medical examiner whenever the injury occurred under suspicious or unknown circumstances. All authority granted to the medical examiner by ORS 146.003 to 146.165 and 146.710 to 146.992 may be exercised in making such investigation.

#### **ORS § 146.740. Reports of medical examiner.**

Whenever the medical examiner concludes that a crime may have been committed by any person in causing the injury, the medical examiner shall report the conclusion to the district attorney.

#### **ORS § 146.750. Injuries to be reported to medical examiner.**

(1) Except as required in subsection (3) of this section, any physician, including any intern and resident, having reasonable cause to suspect that a person brought to the physician or coming before the physician for examination, care or treatment has had injury, as defined in ORS 146.710, inflicted upon the person other than by accidental means, shall report or cause reports to be made in accordance with the provisions of subsection (2) of this section.

(2) An oral report shall be made immediately by telephone or otherwise, and followed as soon thereafter as possible by a report in writing, to the appropriate medical examiner.

(3) When either an injury as defined in ORS 146.710 or abuse as defined in ORS 419B.005 occurs to an unmarried person who is under 18 years of age, the provisions of ORS 419B.005 to 419B.050 shall apply.

## STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

### **Or. Admin. r. 137-084-0001. Definitions**

"Application Form" means the most current version of the Application for Payment Sexual Assault Victims' Emergency Medical Response Fund form issued by the Department of Justice. (A copy of the Application Form is set out as an Appendix to these administrative rules.) [Form not included. See ED. NOTE.]

### **Or. Admin. r. 137-084-0010. Claims Processing**

- (1) A victim of a sexual assault who wants the Fund to pay for a medical examination, collection of forensic evidence using the Oregon State Police SAFE Kit, emergency contraception, or sexually transmitted disease prophylaxis must submit a completed Application Form to the victim's medical services provider. (A copy of the Application Form is set out as an Appendix to these administrative rules). [Form not included. See ED. NOTE.]
- (2) To obtain payment from the Fund, an eligible medical services provider must submit the Application Form to the Department within one year of the date the medical services are provided.
- (3) All medical services invoices must be submitted by the eligible medical services provider with the Application Form. Invoices submitted separately will not be processed.
- (4) To be paid for by the Fund, a complete medical assessment must be completed within 84 hours (three and one-half days) of the sexual assault of the victim and use of the Oregon State Police SAFE Kit must have been authorized by appropriate law enforcement personnel and the Kit must have been released to appropriate law enforcement personnel in a timely manner after its use for collection of information.
- (5) To be paid for by the Fund, a partial medical assessment must be completed within 168 hours (seven days) of the sexual assault of the victim.
- (6) Completed Application Forms submitted with medical services invoices will be processed for payment by the Fund within 60 days of submission.

### **Or. Admin. r. 137-084-0020. Maximum Amounts Paid for Medical Services**

- (1) The Fund will pay eligible medical services providers the actual costs incurred for providing medical services to sexual assault victims up to the following maximum amounts:
  - (a) \$380 for a medical examination plus collection of forensic evidence using the Oregon State Police SAFE Kit;
  - (b) \$175 for a medical examination without collection of forensic evidence using the Oregon State Police SAFE Kit;

- (c) \$55 for emergency contraception (including urine pregnancy test);
- (d) \$100 for sexually transmitted disease prophylaxis.
- (2) An additional payment of \$75 will be made to eligible medical services providers who document that the medical examination, as part of either a partial or complete medical assessment, was conducted by a SANE certified nurse.
- (3) The payment amounts set out in this rule will be reviewed at least every two years by the Attorney General or the Attorney General's designee to determine whether they should be adjusted to meet current circumstances.
- (4) An eligible medical services provider who submits a bill to the Fund under these rules may not bill the victim or the victim's insurance carrier for a medical examination, collection of forensic evidence using the Oregon State Police SAFE Kit, emergency contraception, or sexually transmitted disease prophylaxis, except to the extent the Department is unable to pay the bill due to lack of funds or declines to pay the bill for reasons other than untimely or incomplete submission of the bill to the Fund under OAR 137-084-0030(2)(e).

#### **Or. Admin. r. 137-084-0030. Payment Restrictions and Disqualifications**

- (1) The Fund will not pay for any service not specifically described in 2003 Oregon Laws, Ch. 789 or OAR 137-084-0001 through 137-084-0030. Examples of services not covered by the Fund include, but are not limited to: treatment of injuries; DNA testing; HIV testing; laboratory testing of blood for any purpose; and prescriptions filled off-site of the location of a medical examination. Nothing in this rule is intended to preclude an eligible medical services provider from submitting a claim against the victim, the victim's insurance carrier or any other source for payment for services not specifically described in 2003 Oregon Laws, Ch. 789 or OAR 137-084-0001 through 137-084-0030.
- (2) The Fund reserves the right not to pay for medical services described in 2003 Oregon Laws, Ch. 789 or OAR 137-084-0001 through 137-084-0030 for any one of the following reasons:
  - (a) Services were not provided by an eligible medical services provider.
  - (b) Services were provided to someone other than an eligible victim.
  - (c) Services were not provided in accordance with the requirements in 2003 Oregon Laws, Ch. 789 or OAR 137-084-0001 through 137-084-0030, including the timeliness requirements for complete medical assessments (within 84 hours (three and one-half days) of the sexual assault) and partial medical assessments (within 168 hours (seven days) of the sexual assault).
  - (d) Services provided were duplicate services for the same incident.
  - (e) Failure of the eligible medical services provider to submit a completed Application Form, submission of incomplete invoice(s) for medical services or submission of the Application Form or invoice(s) for medical services more than one year after date services provided. [Form not included. See ED. NOTE.]
  - (f) Insufficient funds in the Fund to cover the services provided. The Fund will pay in full for services provided and billed to the Fund until the money in the Fund is exhausted.

(3) If the Attorney General or the Attorney General's designee determines that the Fund will not pay for one or more of the services described in 2003 Oregon Laws, Ch. 789 or OAR 137-084-0020(1) and (2) for reasons other than those set out in 137-084-0030(2)(e) above, the Attorney General or the Attorney General's designee will provide notice to the medical services provider(s) affected. After receiving such notice, a medical services provider may bill the victim, the victim's insurance carrier or any other source for those medical services provided but not paid for by the Fund.

**PENNSYLVANIA**

*Summary: Pennsylvania does not have a specific requirement that rape be reported; however, it requires that injuries caused by firearms or criminal acts be reported. An exception exists for injuries caused by domestic violence. A hospital or other licensed health care provider may submit a claim for reimbursement to the Office of Victim Services for the cost of a forensic rape examination if the cost is not covered by insurance or if the victim requests that the insurance carrier not be billed. Upon filing of a claim, the Office of Victims' Services shall promptly notify the prosecutor of the county where the crime is alleged to have occurred.*

**STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS**

**18 P.S. § 11.707. Awards**

(a) REQUIREMENTS.-- No award shall be made unless it is determined by a preponderance of the evidence that:

(1) A crime was committed.

(2) The person injured or killed was a direct victim or intervenor.

(3) The crime was promptly reported to the proper authorities. In no case may an award be made if the record shows that the report was made more than 72 hours after the occurrence of the crime unless:

(i) the victim is under 18 years of age at the time of the occurrence of the crime and the alleged offender is the victim's parent or a person responsible for the victim's welfare, an individual residing in the same home as the victim or a paramour of the victim's parent;

or

(ii) the Office of Victims' Services finds the delay to have been justified, consistent with bureau regulations.

(4) The direct victim, intervenor or claimant has fully cooperated with all law enforcement agencies and the Office of Victims' Services unless the Office of Victims' Services finds the noncompliance to have been justified consistent with Office of Victims' Services regulations.

(A.1) PROTECTION FROM ABUSE.-- A claimant who satisfies the eligibility requirements of subsection (a)(1), (2) and (4) may satisfy the eligibility requirement under subsection (a)(3) for

reporting a crime to the proper authorities by commencing an action brought in accordance with 23 Pa.C.S. Ch. 61 (relating to protection from abuse) and as provided for in the Pennsylvania Rules of Civil Procedure. In no case may an award be made if the record shows that the petition was:

(1) Withdrawn, unless the Office of Victim Services finds the withdrawal to have been justified, consistent with regulations of the Office of Victim Services.

(2) Filed more than 72 hours after the occurrence of the criminal conduct leading to the commencement of the action, unless:

(i) the victim is under 18 years of age at the time of the occurrence of the criminal conduct and the alleged offender is the victim's parent or a person responsible for the victim's welfare, an individual residing in the same home as the victim or a paramour of the victim's parent; or

(ii) the Office of Victim Services finds the delay to have been justified, consistent with regulations of the Office of Victim Services.

(b) AMOUNT.--

(1) Any award made under this chapter shall be in an amount not exceeding out-of-pocket loss, together with loss of past, present or future earnings or support resulting from such injury. In no case shall the total amount of an award exceed \$ 35,000 except for payment of the following:

(i) counseling, the maximum amount of which shall be in accordance with paragraph (4.1);

(ii) forensic rape examination and medications directly related to the sexual assault or rape, the amount of which shall not exceed \$ 1,000; or

(iii) reasonable and necessary costs of cleaning the crime scene of a private residence, the amount of which shall not exceed \$ 500.

(2) An award made for loss of earnings or support shall, unless reduced pursuant to other provisions of this chapter, be in an amount equal to the actual loss sustained. The following shall apply:

(i) No such award shall exceed the average weekly wage for all persons covered by the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L. 2897, No. 1), known as the Unemployment Compensation Law, in this Commonwealth as determined annually by the Department of Labor and Industry for each week of lost earnings or support.

(ii) Except as set forth in subparagraph (iii), the aggregate award for the loss shall not exceed \$

15,000.

(iii) In the case of death of a direct victim or intervenor, the aggregate award shall not exceed \$ 20,000.

(3) If an order of restitution has been entered on behalf of the direct victim, those amounts actually collected shall be applied first to property losses incident to the crime and secondly to personal injury losses as set forth in subsection (f).

(4) An award for counseling performed by or under the supervision of a psychiatrist, psychologist, licensed professional counselor or licensed social worker and subject to the provisions of paragraph (4.1) may be made to:

- (i) a direct victim;
- (ii) an individual responsible for the direct victim's welfare;
- (iii) an individual who is physically present at the crime scene and witnesses a violent crime;
- (iv) in the case of a homicide, an individual who discovers the body;
- (v) anyone related to the direct victim within the second degree of consanguinity or affinity;
- (vi) anyone maintaining a common-law relationship with the direct victim;
- (vii) anyone residing in the same household with the direct victim; or
- (viii) anyone engaged to be married to the direct victim.

(4.1) In the case of an award made pursuant to paragraph (4), the following shall apply:

(i) The amount of an award under paragraph (4)(i) shall not exceed \$ 5,000 where the direct victim is an adult and shall not exceed \$ 10,000 where the direct victim is a minor.

(ii) The amount of an award under paragraph (4)(ii), (v), (vi), (vii) or (viii) shall not exceed \$ 2,500 except in the case of a homicide whereby the amount of this award shall not exceed \$ 5,000.

(iii) The amount of an award under paragraph (4)(iii) or

(iv) shall not exceed \$ 1,500.

(5) An award for the reasonable and necessary costs for the replacement of prosthetic devices, wheelchairs, canes, walkers, hearing aids, eyeglasses or other corrective lenses, dental devices or prescription medications damaged or stolen as a result of the crime shall be at a rate set by the Office of Victims' Services. Expenses for prosthetic devices, wheelchairs, canes, walkers, hearing aids, eyeglasses or other corrective lenses, dental devices or prescription medications needed as a result of the crime shall be counted against the \$ 35,000 award limitation.

(c) PUBLIC ASSISTANCE.--PROVISIONS OF AWARDS MADE PURSUANT TO A STATUTE COMPENSATING OR BENEFITING A DIRECT VICTIM OR CLAIMANT SHALL IN NO WAY AFFECT THE CLAIMANT'S OR DIRECT VICTIM'S ELIGIBILITY UNDER PUBLIC ASSISTANCE OR ANY OTHER FEDERAL OR COMMONWEALTH SOCIAL BENEFIT OR ASSISTANCE PROGRAM.

(d) APPORTIONMENT.--IF THERE ARE TWO OR MORE INDIVIDUALS ENTITLED TO AN AWARD AS A RESULT OF THE DEATH OF A DIRECT VICTIM OR INTERVENOR, THE AWARD SHALL BE APPORTIONED AMONG THE CLAIMANTS.

(e) REDUCTION.--EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, AN AWARD MADE UNDER THIS CHAPTER SHALL BE REDUCED BY THE AMOUNT OF ANY PAYMENTS RECEIVED OR TO BE RECEIVED BY THE CLAIMANT AS A RESULT OF THE INJURY:

- (1) from or on behalf of the individual who committed the crime;
- (2) under any insurance or health and welfare programs, including those mandated by law;
- (3) under any contract of insurance wherein the claimant is the beneficiary;
- (4) from public funds;
- (5) as an emergency award under section 706;
- (6) under any pension program, including those providing for disability or survivor's benefits; or
- (7) under a settlement or award made by or on behalf of a party alleged to be responsible in whole or in part for the injury, without regard to the party's criminal culpability.

(f) DIRECT VICTIM RESPONSIBILITY.--

(1) Except as set forth in paragraphs (2) and (3), in determining the amount of an award, the Office of Victims' Services shall determine whether the direct victim or intervenor, because of

conduct, contributed to the infliction of the injury. The Office of Victims' Services shall reduce the amount or deny the claim altogether in accordance with the determination.

(2) If the crime involved is rape or sexual assault, the conduct of the direct victim shall not be considered. If the crime involved is related to domestic violence, the conduct of the direct victim shall not be considered unless the direct victim was the primary aggressor.

(3) If the crime involved is a homicide, the conduct of the direct victim shall not be considered for claims by eligible claimants for counseling.

(g) INTERVENOR RESPONSIBILITY.--IN DETERMINING THE AMOUNT OF AN AWARD TO AN INTERVENOR, THE OFFICE OF VICTIMS' SERVICES MAY CONSIDER WHETHER THE INTERVENOR, BECAUSE OF CONDUCT, CONTRIBUTED TO THE INFLECTION OF THE INJURY. THE OFFICE OF VICTIMS' SERVICES SHALL REDUCE THE AMOUNT OR DENY THE CLAIM ALTOGETHER IN ACCORDANCE WITH THE DETERMINATION.

(h) FORENSIC RAPE INVESTIGATION.--

(1) A hospital or other licensed health care provider may submit a claim for reimbursement for the cost of a forensic rape examination if the cost is not covered by insurance or if the victim requests that the insurance carrier not be billed. Upon filing of a claim, the Office of Victims' Services shall promptly notify the prosecutor of the county where the crime is alleged to have occurred. The reimbursement, where applicable, shall be at a rate set by the Office of Victims' Services.

(2) The cost of a forensic rape examination and the cost of medications prescribed to the direct victim shall not be charged to the victim.

(3) A sexual assault or rape victim need not be an applicant for any other compensation under this chapter.

## REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

### **18 Pa.C.S. § 5106. Failure to report injuries by firearm or criminal act**

(a) OFFENSE DEFINED.-- Except as set forth in subsection (a.1), a physician, intern or resident, or any person conducting, managing or in charge of any hospital or pharmacy, or in charge of any

ward or part of a hospital, to whom shall come or be brought any person:

(1) suffering from any wound or other injury inflicted by his own act or by the act of another which caused death or serious bodily injury, or inflicted by means of a deadly weapon as defined in section 2301 (relating to definitions); or

(2) upon whom injuries have been inflicted in violation of any penal law of this Commonwealth; commits a summary offense if the reporting party fails to report such injuries immediately, both by telephone and in writing, to the chief of police or other head of the police department of the local government, or to the Pennsylvania State Police. The report shall state the name of the injured person, if known, the injured person's whereabouts and the character and extent of the person's injuries.

(A.1) EXCEPTION.-- In cases of bodily injury as defined in section 2301 (relating to definitions), failure to report under subsection (a)(2) does not constitute an offense if all of the following apply:

(1) The victim is an adult and has suffered bodily injury.

(2) The injury was inflicted by an individual who:

(i) is the current or former spouse of the victim;

(ii) is a current or former sexual or intimate partner of the victim;

(iii) shares biological parenthood with the victim; or

(iv) is or has been living as a spouse of the victim.

(3) The victim has been informed:

(i) of the duty to report under subsection (a)(2); and

(ii) that the report under subsection (a)(2) cannot be made without the victim's consent.

(4) The victim does not consent to the report under subsection (a)(2).

(5) The victim has been provided with a referral to the appropriate victim service agency such as a domestic violence or sexual assault program.

(b) IMMUNITY GRANTED.-- No physician or other person shall be subject to civil or criminal liability by reason of complying with this section.

(c) **PHYSICIAN-PATIENT PRIVILEGE UNAVAILABLE.**-- In any judicial proceeding resulting from a report pursuant to this section, the physician-patient privilege shall not apply in respect to evidence regarding such injuries or the cause thereof. This subsection shall not apply where a report is not made pursuant to subsection (a.1).

(d) **REPORTING OF CRIME ENCOURAGED.**-- Nothing in this chapter precludes a victim from reporting the crime that resulted in injury.

(e) **AVAILABILITY OF INFORMATION.**-- A physician or other individual may make available information concerning domestic violence or sexual assault to any individual subject to the provisions of this chapter.

## RHODE ISLAND

***Summary: There is no requirement that rape be reported. Medical providers must provide sexual assault examinations without discrimination on account of source of payment. There is a requirement that gunshot wounds be reported.***

### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **R.I. Gen. Laws § 23-17-26. Emergency health care**

(a) Every health care facility that has an emergency medical care unit shall provide to every person prompt life saving medical care treatment in an emergency, and a sexual assault examination for victims of sexual assault without discrimination on account of economic status or source of payment, and without delaying treatment for the purpose of a prior discussion of the source of payment unless the delay can be imposed without material risk to the health of the person.

(b) Violations of this section shall be reported to the director of the state department of health who shall investigate the violations as the director deems appropriate.

### REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

#### **R.I. Gen. Laws § 11-47-48. Report of gunshot wounds**

Every physician attending or treating a case of bullet wound, gunshot wound, powder burn, or any other injury arising from or caused by the discharge of a gun, pistol, or other firearm, or whenever any case is treated in a hospital, sanitarium, dispensary, or other institution the person in charge of it, shall report the case at once to the police authorities of the town or city where the physician, hospital, sanitarium, dispensary or institution is located. This section shall not apply to wounds, burns, or injuries received by any member of the armed forces of the United States or of this state while engaged in the actual performance of duty. Whoever violates any provision of this section shall be punished by a fine of not less than fifty dollars (\$ 50.00) nor more than one hundred dollars (\$ 100).

**HISTORY:** P.L. 1929, ch. 1384, § 1; G.L. 1938, ch. 607, § 13; G.L. 1956, § 11-47-38; G.L. 1956, § 11-47-48; P.L. 1959, ch. 75, § 1.

**SOUTH CAROLINA**

***Summary: There is no requirement that rape be reported; however, there is a requirement that gunshot wounds be reported. The victim cannot be required to pay for a medicolegal examination if the victim has filed an incident report with a law enforcement agency.***

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**STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS****S.C. Code Ann. § 16-3-1350. Medicolegal examinations for victims of criminal sexual conduct or child sex abuse.**

(A) The State must ensure that a victim of criminal sexual conduct in any degree, criminal sexual conduct with a minor in any degree, or child sexual abuse must not bear the cost of his or her routine medicolegal exam following the assault if the victim has filed an incident report with a law enforcement agency.

(B) These exams must be standardized relevant to medical treatment and to gathering evidence from the body of the victim and must be based on and meet minimum standards for rape exam protocol as developed by the South Carolina Law Enforcement Division, the South Carolina Hospital Association, and the Governor's Office Division of Victim Assistance with production costs to be paid from funds appropriated for the Victim's Compensation Fund. These exams must include treatment for venereal disease, and must include medication for pregnancy prevention if indicated and if desired. The South Carolina Law Enforcement Division must distribute these exam kits to any licensed health care facility providing sexual assault exams. When dealing with a victim of criminal sexual assault, the law enforcement agency immediately must transport the victim to the nearest licensed health care facility which performs sexual assault exams. A health care facility providing sexual assault exams must use the standardized protocol described above.

(C) A licensed health care facility, upon completion of a routine sexual assault exam as described in subsection (B) performed on a victim of criminal sexual conduct in any degree, criminal sexual conduct with a minor in any degree, or child sexual abuse, may file a claim for reimbursement directly to the South Carolina Crime Victim's Compensation Fund if the offense occurred in South Carolina. The South Carolina Crime Victim's Compensation Fund must develop procedures for health care facilities to follow when filing a claim with respect to the privacy of the victim. Health care facility personnel must obtain information necessary for the claim at the time of the exam, if possible. The South Carolina Crime Victim's Compensation Fund must reimburse eligible health care facilities directly.

(D) The Governor's Office Division of Victim Assistance must utilize existing funds appropriated from the general fund for the purpose of compensating licensed health care facilities for the cost of

routine medical exams for sexual assault victims as described above. When the director determines that projected reimbursements in a fiscal year provided in this section exceed funds appropriated for payment of these reimbursements, he must direct the payment of the additional services from the Victim's Compensation Fund. For the purpose of this particular exam, the one hundred dollar deductible is waived for award eligibility under the fund. The South Carolina Victim's Compensation Fund must develop appropriate guidelines and procedures and distribute them to law enforcement agencies and appropriate health care facilities.

### REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

#### **S.C. Code Ann. § 16-3-1072. Reporting medical treatment for gunshot wound; immunity; physician-patient privilege abrogated; penalties.**

(A) Any physician, nurse, or any other medical or emergency medical services personnel of a hospital, clinic, or other health care facility or provider who knowingly treats any person suffering from a gunshot wound or who receives a request for such treatment shall report within a reasonable time the existence of the gunshot wound to the sheriff's department of the county in which the treatment is administered or a request is received. However, no report is necessary if a law enforcement officer is present with the victim while treatment is being administered.

(B) The reports provided for in subsection (A) may be made orally, or otherwise. A hospital, clinic, or other health care facility or provider may designate an individual to make the reports provided for in this section. However, a report must be made as soon as possible, but no later than the time of the victim's release from that facility.

(C) A person required to make a report pursuant to this section or who participates in judicial proceedings resulting from the report, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil and criminal proceedings, good faith is rebuttably presumed.

(D) For purposes of this section, the confidential or privileged nature of communication between physician and patient and any other professional person and his patient or client is abrogated and does not constitute grounds for failure to report or the exclusion of evidence resulting from a report made pursuant to this section.

(E) A person required to report the existence of a gunshot wound who knowingly fails to do so is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars.

## SOUTH DAKOTA

***SUMMARY:*** *There is no mandatory reporting requirement specific to sexual assault; however, it is mandatory to report bullet wounds, gunshot wounds and injuries arising from the discharge of a firearm. A forensic sexual assault examination shall be provided without cost if the sexual assault is reported to the state.*

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

**S.D. Codified Laws § 22-22-26. Examination of victim to gather evidence -- Responsibility for cost.**

If a physician, hospital, or clinic examines the victim of an alleged rape or sexual offense to gather information or evidence about the alleged crime, the examination shall be provided without cost to the victim if the alleged offense is reported to the state. The physician, hospital, or clinic shall be paid for the cost of the examination by the county where the alleged rape or sexual offense occurred, which shall be reimbursed by any defendant if convicted.

### REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

**S.D. Codified Laws § 23-13-10. Persons treating firearm injury -- Reporting requirement.**

Any person treating any bullet wound, gunshot wound, powder burn, or any other injury arising from or caused by the discharge of any firearm, shall report such treatment to the sheriff of the county in which the wound is treated.

**HISTORY:** Source: SL 1967, ch 111, § 1; 1978, ch 169, § 4.

**TENNESSEE**

***SUMMARY: There is no mandatory reporting requirement; however, there is a requirement to report injuries caused by a knife, pistol, gun, deadly weapon or by other means of violence.***

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**REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS****Tenn. Code Ann. § 38-1-101. Reports to law enforcement officials of certain types of injuries**

(a) All hospitals, clinics, sanitariums, doctors, physicians, surgeons, nurses, pharmacists, undertakers, embalmers, or other persons called upon to tender aid to persons suffering from any wound or other injury inflicted by means of a knife, pistol, gun, or other deadly weapon, or by other means of violence, or resulting from exposure to a methamphetamine laboratory or a methamphetamine laboratory related fire, explosion, or chemical release, or suffering from the effects of poison, or suffocation, shall report the same immediately to the chief of police, if the injured person is in or brought into or the injury occurred in an incorporated town or city, or to the sheriff if the injured person is in or brought into or the injury occurred in the county outside the corporate limits of any incorporated town or city, and shall also, in either event, report the same immediately to the district attorney general or a member of the district attorney general's staff of the judicial district in which the injured person is, or has been brought into, or the injury occurred. Such report shall state the name, residence, and employer of such person, if known, such person's whereabouts at the time the report is made, the place the injury occurred, and the character and extent of such injuries.

(b) Injuries to minors which are required to be reported by § 37-1-403 are not required to be reported under this section.

**TEXAS**

***Summary: There is no requirement that rape be reported. A law enforcement agency that requests a medical examination of a victim of a sexual assault for use in the investigation or prosecution of the offense shall pay all costs of the forensic examination. The sexual assault must be reported within 96 hours. It is mandatory to report gunshot wounds.***

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**STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS****Tex. Code Crim. Proc. art. 56.06. Medical Examination for Sexual Assault Victim; Costs**

(a) If a sexual assault is reported to a law enforcement agency within 96 hours of the assault, the law enforcement agency, with the consent of the victim, a person authorized to act on behalf of the victim, or an employee of the Department of Family and Protective Services, shall request a medical examination of the victim of the alleged assault for use in the investigation or prosecution of the offense. A law enforcement agency may decline to request a medical examination under this subsection only if the person reporting the sexual assault has made one or more false reports of sexual assault to any law enforcement agency and if there is no other evidence to corroborate the current allegations of sexual assault.

(b) If a sexual assault is not reported within the period described by Subsection (a), on receiving the consent described by that subsection the law enforcement agency may request a medical examination of a victim of an alleged sexual assault as considered appropriate by the agency.

(c) A law enforcement agency that requests a medical examination of a victim of an alleged sexual assault for use in the investigation or prosecution of the offense shall pay all costs of the examination. On application to the attorney general, the law enforcement agency is entitled to be reimbursed for the reasonable costs of that examination if the examination was performed by a physician or by a sexual assault examiner or sexual assault nurse examiner, as defined by section 420.003, Government Code.

(d) A law enforcement agency or prosecuting attorney's office may pay all costs related to the testimony of a licensed health care professional in a criminal proceeding regarding the results of the medical examination or manner in which it was performed.

(e) This article does not require a law enforcement agency to pay any costs of treatment for injuries.

**Tex. Code Crim. Proc. art. 56.08 Costs of medical examination**

(a) A law enforcement agency that requests a medical examination of a victim of an alleged sexual assault for use in the investigation or prosecution of the offense shall pay all costs of the examination. On application to the attorney general, the law enforcement agency is entitled to be reimbursed for the reasonable costs of that examination if the examination was performed by a physician or by a sexual assault examiner or sexual assault nurse examiner, as defined by Section 420.003, Government Code.

(b) A law enforcement agency or prosecuting attorney's office may pay all costs related to the testimony of a licensed health care professional in a criminal proceeding regarding the results of the medical examination or manner in which it was performed.

(c) This article does not require a law enforcement agency to pay any costs of treatment for injuries.

**Tex. Admin. Code tit. 1, § 61.803. Reimbursement Procedures**

(a) The law enforcement agency seeking reimbursement for the reasonable costs of a forensic sexual assault examination must comply with the provisions of this section.

(b) The forensic sexual assault examination must have been performed at the request of a law enforcement agency for use in the investigation and prosecution of an alleged sexual assault.

(c) A physician, a sexual assault examiner, or a sexual assault nurse examiner must have performed the forensic sexual assault examination. A sexual assault examiner or a sexual assault nurse examiner performing a forensic sexual assault examination must have oversight by a medical director.

(d) Payments will be only for reimbursement; therefore, the law enforcement agency must have received and paid all bills associated with the forensic sexual assault examination before applying to the OAG for reimbursement. The law enforcement agency should attach all necessary supporting documentation to the OAG approved Application for Reimbursement.

(e) The law enforcement agency must complete all sections of the Application for Reimbursement. Incomplete applications will not be processed and will be returned to the law enforcement agency noting the reason the application is incomplete. The verification section of the Application for Reimbursement must be signed by an appropriate representative of the law enforcement agency who has knowledge of the facts stated in the application.

(f) All bills associated with the requested forensic sexual assault examination must be attached to the application, and only those expenses for the actual forensic sexual assault examination will be considered for reimbursement. All bills must be submitted at one time. No other bills submitted to the OAG will be processed after the Application for Reimbursement is received. At

the written request of a law enforcement agency, items that have been denied on an application submitted between June 17, 2001, and July 30, 2002, may be re-submitted for review by the OAG if such denied items would be reimbursable under these rules.

Source: The provisions of this §61.803 adopted to be effective December 15, 2002, 27 TexReg 11513.

**REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS**

**Tex. Health & Safety Code § 161.041. Mandatory Reporting of Gunshot Wounds**

A physician who attends or treats, or who is requested to attend or treat, a bullet or gunshot wound, or the administrator, superintendent, or other person in charge of a hospital, sanatorium, or other institution in which a bullet or gunshot wound is attended or treated or in which the attention or treatment is requested, shall report the case at once to the law enforcement authority of the municipality or county in which the physician practices or in which the institution is located.

## UTAH

*Summary: There is no specific requirement that rape be reported in Utah; however, there is a requirement that injuries caused a knife, gun, pistol, explosive, infernal device, or deadly weapon, or by violation of any criminal statute be reported. The Crime Victims' Reparation Fund will pay for examinations necessary to document criminally injurious conduct.*

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **Utah Code § 63-25a-402. Definitions**

As used in this chapter:

(1) "Accomplice" means a person who has engaged in criminal conduct as defined in Section 76-2-202.

(2) "Board" means the Crime Victims' Reparations Board created under Section 63-25a-404.

(3) "Bodily injury" means physical pain, illness, or any impairment of physical condition.

(4) "Claim" means:

(a) the victim's application or request for a reparations award; and

(b) the formal action taken by a victim to apply for reparations pursuant to Sections 63-25a-401 through 63-25a-428.

(5) "Claimant" means any of the following claiming reparations under this chapter:

(a) a victim;

(b) a dependent of a deceased victim;

(c) a representative other than a collateral source; or

(d) the person or representative who files a claim on behalf of a victim.

(6) "Child" means an unemancipated person who is under 18 years of age.

(7) "Collateral source" means the definition as provided in Section 63-25a-413.

(8) "Contested case" means a case which the claimant contests, claiming the award was either inadequate or denied, or which a county attorney, a district attorney, a law enforcement officer, or other individual related to the criminal investigation proffers reasonable evidence of the claimant's lack of cooperation in the prosecution of a case after an award has already been given.

(9) (a) "Criminally injurious conduct" other than acts of war declared or not declared means conduct that:

(i) is or would be subject to prosecution in this state under Section 76-1-201;

(ii) occurs or is attempted;

(iii) causes, or poses a substantial threat of causing, bodily injury or death;

(iv) is punishable by fine, imprisonment, or death if the person engaging in the conduct possessed the capacity to commit the conduct; and

(v) does not arise out of the ownership, maintenance, or use of a motor vehicle, aircraft, or water craft, unless the conduct is intended to cause bodily injury or death, or is conduct which is or would be punishable under Title 76, Chapter 5, Offenses Against the Person, or as any offense chargeable as driving under the influence of alcohol or drugs.

(b) "Criminally injurious conduct" includes an act of terrorism, as defined in 18 U.S.C. 2331 committed outside of the United States against a resident of this state. "Terrorism" does not include an "act of war" as defined in 18 U.S.C. 2331.

(10) "Dependent" means a natural person to whom the victim is wholly or partially legally responsible for care or support and includes a child of the victim born after his death.

(11) "Dependent's economic loss" means loss after the victim's death of contributions of things of economic value to his dependent, not including services the dependent would have received from the victim if he had not suffered the fatal injury, less expenses of the dependent avoided by reason of victim's death.

(12) "Dependent's replacement services loss" means loss reasonably and necessarily incurred by the dependent after the victim's death in obtaining services in lieu of those the decedent would have performed for his benefit if he had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death and not subtracted in calculating the dependent's economic loss.

(13) "Director" means the director of the Reparations Office.

(14) "Disposition" means the sentencing or determination of penalty or punishment to be imposed upon a person:

(a) convicted of a crime;

(b) found delinquent; or

(c) against whom a finding of sufficient facts for conviction or finding of delinquency is made.

(15) "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and if injury causes death, dependent's economic loss and

dependent's replacement service loss. Noneconomic detriment is not loss, but economic detriment is loss although caused by pain and suffering or physical impairment.

(16) "Elderly victim" means a person 60 years of age or older who is a victim.

(17) "Fraudulent claim" means a filed claim based on material misrepresentation of fact and intended to deceive the reparations staff for the purpose of obtaining reparation funds for which the claimant is not eligible as provided in Section 63-25a-410.

(18) "Fund" means the Crime Victim Reparation Fund created in Section 63-63a-4.

(19) "Law enforcement officer" means a law enforcement officer as defined in Section 53-13-103.

(20) "Medical examination" means a physical examination necessary to document criminally injurious conduct but does not include mental health evaluations for the prosecution and investigation of a crime.

(21) "Mental health counseling" means outpatient and inpatient counseling necessitated as a result of criminally injurious conduct. The definition of mental health counseling is subject to rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(22) "Misconduct" as provided in Subsection 63-25a-412(1)(b) means conduct by the victim which was attributable to the injury or death of the victim as provided by rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(23) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage, except as provided in this chapter.

(24) "Pecuniary loss" does not include loss attributable to pain and suffering except as otherwise provided in this chapter.

(25) "Offender" means a person who has violated the criminal code through criminally injurious conduct regardless of whether he is arrested, prosecuted, or convicted.

(26) "Offense" means a violation of the criminal code.

(27) "Perpetrator" means the person who actually participated in the criminally injurious conduct.

(28) "Personal property" has the same definition as provided in Section 68-3-12.

(29) "Reparations Office" means the office of the reparations staff for the purpose of carrying out this chapter.

(30) "Reparations officer" means a person employed by the Reparations Office to investigate claims of victims and award reparations under this chapter, and includes the director when he is acting as a reparations officer.

(31) "Reparations staff" means the director, the reparations officers, and any other staff employed to administer the Crime Victims' Reparations Act.

(32) "Replacement service loss" means expenses reasonably and necessarily incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but the benefit of himself or his dependents if he had not been injured.

(33) "Representative" means the victim, immediate family member, legal guardian, attorney, conservator, executor, or an heir of a person but does not include service providers.

(34) "Restitution" means money or services an appropriate authority orders an offender to pay or render to a victim of the offender's conduct.

(35) "Secondary victim" means a person who is traumatically affected by the criminally injurious conduct subject to rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(36) "Service provider" means a person or agency who provides a service to crime victims for a monetary fee except attorneys as provided in Section 63-25a-424.

(37) (a) "Victim" means a person who suffers bodily or psychological injury or death as a direct result of criminally injurious conduct or of the production of pornography in violation of Sections 76-5a-1 through 76-5a-4 if the person is a minor.

(b) "Victim" does not include a person who participated in or observed the judicial proceedings against an offender unless otherwise provided by statute or rule.

(c) "Victim" includes a resident of this state who is injured or killed by an act of terrorism, as defined in 18 U.S.C. 2331, committed outside of the United States.

(38) "Work loss" means loss of income from work the injured victim would have performed if he had not been injured and expenses reasonably incurred by him in obtaining services in lieu of those he would have performed for income, reduced by any income from substitute work he was capable of performing but unreasonably failed to undertake.

**HISTORY:** C. 1953, 63-63-2, enacted by L. 1986, ch. 150, § 2; 1987, ch. 92, § 132; 1987, ch. 119, § 1; 1989, ch. 46, § 2; 1990, ch. 91, § 1; 1991, ch. 10, § 3; 1991, ch. 84, § 2; 1993, ch. 38, § 71; 1993, ch. 72, § 1; renumbered by L. 1996, ch. 242, § 33; 1997, ch. 308, § 8; 1998, ch. 282, § 59; 2000, ch. 235, § 1; 2002, ch. 256, § 47.

### Utah Code § 63-25a-411. Compensable losses and amounts

A reparations award under this chapter may be made if:

(1) the reparations officer finds the claim satisfies the requirements for the award under the provisions of this chapter and the rules of the board;

- (2) monies are available in the fund;
- (3) the person for whom the award of reparations is to be paid is otherwise eligible under this act;
- (4) the claim is for an allowable expense incurred by the victim, as follows:
  - (a) reasonable and necessary charges incurred for products, services, and accommodations;
  - (b) inpatient and outpatient medical treatment and physical therapy, subject to rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act;
  - (c) mental health counseling which:
    - (i) is set forth in a mental health treatment plan which has been approved prior to any payment by a reparations officer; and
    - (ii) qualifies within any further rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act;
  - (d) actual loss of past earnings and anticipated loss of future earnings because of a death or disability resulting from the personal injury at a rate not to exceed 66- 2/3% of the person's weekly gross salary or wages or the maximum amount allowed under the state workers' compensation statute;
  - (e) care of minor children enabling a victim or spouse of a victim, but not both of them, to continue gainful employment at a rate per child per week as determined under rules established by the board;
  - (f) funeral and burial expenses for death caused by the criminally injurious conduct, subject to rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act;
  - (g) loss of support to the dependent or dependents not otherwise compensated for a pecuniary loss for personal injury, for as long as the dependence would have existed had the victim survived, at a rate not to exceed 66- 2/3% of the person's weekly salary or wages or the maximum amount allowed under the state workers' compensation statute, whichever is less;
  - (h) personal property necessary and essential to the health or safety of the victim as defined by rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and
  - (i) medical examinations as defined in Section 63-25a-402, subject to rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, which may allow for exemptions from Sections 63-25a-409, 63-25a-412, and 63-25a-413.

(5) If a Utah resident suffers injury or death as a result of criminally injurious conduct inflicted in a state, territory, or country that does not provide a reciprocal crime victims' compensation program, the Utah resident has the same rights under this chapter as if the injurious conduct occurred in this state.

(6) An award of reparations shall not exceed \$ 25,000 in the aggregate unless the victim is entitled to proceeds in excess of that amount as provided in Subsection 77-38a-403(2). However, reparations for actual medical expenses incurred as a result of homicide, attempted homicide, aggravated assault, or DUI offenses, may be awarded up to \$ 50,000 in the aggregate.

**HISTORY:** C. 1953, 63-63-14, enacted by L. 1993, ch. 72, § 8; 1995, ch. 75, § 1; renumbered by L. 1996, ch. 242, § 42; 1997, ch. 308, § 13; 2000, ch. 235, § 7; 2002, ch. 35, § 3; 2002, ch. 256, § 51.

## REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

### **CHAPTER 23a**

### **INJURY REPORTING BY HEALTH CARE PROVIDERS**

#### **26-23a-1. Definitions.**

As used in this chapter:

- (1) "Health care provider" means any person, firm, corporation, or association which furnishes treatment or care to persons who have suffered bodily injury, and includes hospitals, clinics, podiatrists, dentists and dental hygienists, nurses, nurse practitioners, physicians and physicians' assistants, osteopathic physicians, naturopathic practitioners, chiropractors, acupuncturists, paramedics, and emergency medical technicians.
- (2) "Injury" does not include any psychological or physical condition brought about solely through the voluntary administration of prescribed controlled substances.
- (3) "Law enforcement agency" means the municipal or county law enforcement agency:
  - (a) having jurisdiction over the location where the injury occurred; or
  - (b) if the reporting health care provider is unable to identify or contact the law enforcement agency with jurisdiction over the injury, "law enforcement agency" means the agency nearest to the location of the reporting health care provider.
- (4) "Report to a law enforcement agency" means to report, by telephone or other spoken communication, the facts known regarding an injury subject to reporting under Section 26-23a-2 to the dispatch desk or other staff person designated by the law enforcement agency to receive reports from the public.

**26-23a-2. Injury reporting requirements by health care provider - Contents of report.**

(1) (a) Any health care provider who treats or cares for any person who suffers from any wound or other injury inflicted by the person's own act or by the act of another by means of a knife, gun, pistol, explosive, infernal device, or deadly weapon, or by violation of any criminal statute of this state, shall immediately report to a law enforcement agency the facts regarding the injury.

(b) The report shall state the name and address of the injured person, if known, the person's whereabouts, the character and extent of the person's injuries, and the name, address, and telephone number of the person making the report.

(2) A health care provider may not be discharged, suspended, disciplined, or harassed for making a report pursuant to this section.

(3) A person may not incur any civil or criminal liability as a result of making any report required by this section.

(4) A health care provider who has personal knowledge that the report of a wound or injury has been made in compliance with this section is under no further obligation to make a report regarding that wound or injury under this section.

**26-23a-3. Penalties.**

Any health care provider who intentionally or knowingly violates any provision of Section 26-23a-2 is guilty of a class B misdemeanor.

**VERMONT**

*Summary: There is no specific requirement that rape be reported. It is mandatory to report gunshot wounds. The state shall pay for sexual assault forensic examinations.*

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**STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS****32 V.S.A. § 1407. Costs to be borne by the state**

The state shall bear the costs of medical and psychological examinations administered to victims of crime committed in this state, in instances where that examination is requested by a law enforcement officer or a prosecuting authority of the state or any of its subdivisions. The state shall also bear the costs of medical examinations administered to victims in cases of alleged sexual assault where the victim obtains such an examination prior to receiving such a request. These costs may be paid from the victims' compensation fund from funds appropriated for that purpose. A victim, at his or her own expense, may obtain copies of the results of an examination under this section.

**REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS****13 V.S.A. § 4012. Reporting treatment of firearm wounds**

(a) Every physician attending or treating a case of bullet wound, gunshot wound, powder burn, or any other injury arising from or caused by the discharge of a gun, pistol, or other firearm, or whenever such case is treated in a hospital, sanitarium or other institution, the manager, superintendent or other person in charge shall report such case at once to local law enforcement officials or the state police. The provisions of this section shall not apply to such wounds, burns or injuries received by a member of the armed forces of the United States or state of Vermont while engaged in the actual performance of duty.

(b) A person violating the provisions of this section shall be fined not more than \$ 100.00.

## VIRGINIA

***SUMMARY: There is no mandatory reporting requirement. It is mandatory to report injuries caused by guns, knives and similar weapons. All medical fees involved in the gathering of evidence where medical evidence is necessary to establish a crime has occurred shall be paid by the Commonwealth.***

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **Va. Code Ann. § 19.2-165.1. Payment of medical fees in certain criminal cases; reimbursement**

All medical fees involved in the gathering of evidence for all criminal cases where medical evidence is necessary to establish a crime has occurred and for cases involving abuse of children under the age of 18 shall be paid by the Commonwealth out of the appropriation for criminal charges, provided that any medical evaluation, examination, or service rendered be performed by a physician or facility specifically designated by the attorney for the Commonwealth in the city or county having jurisdiction of such case for such a purpose. If no such physician or facility is reasonably available in such city or county, then the attorney for the Commonwealth may designate a physician or facility located outside and adjacent to such city or county.

Where there has been no prior designation of such a physician or facility, such medical fees shall be paid out of the appropriation for criminal charges upon authorization by the attorney for the Commonwealth of the city or county having jurisdiction over the case. Such authorization may be granted prior to or within 48 hours after the medical evaluation, examination, or service rendered.

Upon conviction of the defendant in any such case, the court shall order that the defendant reimburse the Commonwealth for payment of such medical fees.

### REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

#### **Va. Code Ann. § 54.1-2967. Physicians and others rendering medical aid to report certain wounds**

Any physician or other person who renders any medical aid or treatment to any person for any wound which such physician or other person knows or has reason to believe is a wound inflicted

by a weapon specified in § 18.2-308<sup>10</sup> and which wound such physician or other person believes or has reason to believe was not self-inflicted shall as soon as practicable report such fact, including the wounded person's name and address, if known, to the sheriff or chief of police of the county or city in which treatment is rendered. If such medical aid or treatment is rendered in a hospital or similar institution, such physician or other person rendering such medical aid or treatment shall immediately notify the person in charge of such hospital or similar institution, who shall make such report forthwith.

Any physician or other person failing to comply with this section shall be guilty of a Class 3 misdemeanor. Any person participating in the making of a report pursuant to this section or participating in a judicial proceeding resulting therefrom shall be immune from any civil liability in connection therewith, unless it is proved that such person acted in bad faith or with malicious intent.

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<sup>10</sup> Section 18.2-308 includes the following weapons: “ (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, machete, razor, slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or (v) any weapon of like kind as those enumerated in this subsection”. Va. Code. Ann. § 18.2-308(A).

## WASHINGTON

*Summary: There is no specific requirement that rape be reported.*

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### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **Wash. Admin. Code 296-30-170. Who is required to pay for sexual assault examinations?**

When a sexual assault examination is performed for the purpose of gathering evidence for possible prosecution, the costs of the examination must be billed to the crime victims compensation program. We are the primary payer of this benefit. The client is not required to file an application with us to receive this benefit and may not be billed for these costs. If the examination includes treatment costs or the client will require follow-up treatment, an application for benefits must be filed with us for these services to be considered for payment.

Statutory Authority: RCW 7.68.030, 7.68.170. 00-03-056, S 296-30-170, filed 1/14/00, effective 2/14/00. Statutory Authority: Chapter 7.68 RCW. 86- 01-028 (Order 85-37), S 296-30-170, filed 12/11/85; 85-03-060 (Order 85-3), S 296-30-170, filed 1/15/85.

**WEST VIRGINIA**

***SUMMARY: There is no mandatory reporting requirement. Investigating officer and prosecuting attorney must approve the examination, which must be conducted within a reasonable time period. It is mandatory to report gunshot and stab wounds.***

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**STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS****W. Va. C.S.R. § 168-1-1. General.**

1.1. Scope. -- This rule outlines procedures for paying the costs of forensic medical examinations for victims of sexual offenses from the forensic medical examination fund administered by the West Virginia Prosecuting Attorneys Institute. This rule is not intended to set standards for the conduct of a criminal investigation or to affect in any manner the admissibility of evidence.

1.2. Authority. -- W. Va. Code § 61-8b-18.

1.3. Filing Date. -- June 3, 2002.

1.4. Effective Date. -- July 3, 2002.

**W. Va. C.S.R. § 168-1-3. Responsibilities of the Licensed Medical Facility.**

3.1. In order to be eligible for and to receive reimbursement for conducting forensic medical examinations, a licensed medical facility must comply with the following procedures:

3.1.1. Each hospital performing medical examinations must use either the WV State Police Sexual Assault Kit or kits containing, at a minimum, the items contained in the WV State Police Sexual Assault Kit. Each hospital may order sexual assault kits free of charge from the WV State Police.

3.1.2. If an investigating officer is not present at the time the alleged victim arrives at the hospital, an investigating officer or local police agency should be contacted immediately through appropriate emergency channels.

3.1.3. Prior to conducting a forensic medical examination, the prosecuting attorney or assistant prosecuting attorney in the county where the alleged assault occurred must be notified and approve conducting a forensic medical examination. If the prosecuting attorney or assistant prosecuting attorney is not available, then approval must be obtained from the investigating officer or police agency. The hospital should keep on hand copies of the Forensic Medical Examination Fund Certification Form, available upon request from the Prosecuting Attorneys Institute. The obtaining of consents included in the sexual assault kit and any additional consents which may be required by law is the responsibility of the hospital.

3.1.4. If possible, the forensic medical examination should be conducted by a physician, a sexual assault nurse examiner (SANE), a physician assistant working under the direct supervision of a physician, or an advanced practice nurse. Recognizing, however, that sensitivity to the needs of a victim of sexual assault may preclude delays in conducting the examination, payment will not be refused based on qualifications of the medical personnel performing the examination when the forensic medical examination is conducted by a licensed health care professional acting within the scope of practice at a licensed medical facility.

3.1.5. Hospital personnel should take note of any physical evidence, such as statements made by the alleged victim, as well as articles of clothing, etc. It is strongly recommended that the hospital preserve documents concerning this evidence and record the methods of collection.

3.1.6. After gathering the forensic evidence, the sexual assault kit shall be sealed and turned over to the investigating officer or police agency. Any and all other evidence collected by hospital staff shall also be turned over to the investigating officer or police agency.

3.1.7. Following the completion of a forensic medical examination, the hospital shall submit within a reasonable time of the date of examination an original invoice for the forensic medical examination to the prosecuting attorney in the county where the alleged offense occurred. The invoice shall contain the name of the alleged victim and the date of the alleged offense.

3.1.8. A second original invoice should be sent to the WV Prosecuting Attorneys Institute at its regular business address, Attention: Forensic Medical Examination Fund. Reimbursement from the Fund is limited to \$350.00 for the cost of a forensic medical examination or, when that sum appears to be less than all reasonable, customary and usual costs of the forensic medical examination, a greater sum determined by resolution of the Executive Counsel of the West Virginia Prosecuting Attorneys Institute after consultation with providers and consideration of the limits of available funding. A licensed medical facility may not bill the victim of an alleged violation for costs of a forensic medical examination authorized and approved by a Prosecuting Attorney, investigating officer or police agency.

#### **W. Va. C.S.R. § 168-1-4. Responsibilities of Law Enforcement Agencies.**

4.1. The investigating officer or law enforcement agency is responsible for the following duties:

4.1.1. The investigating officer should inform the victim upon arrival at the hospital that the Forensic Medical Examination Fund will pay for the cost of the forensic medical examination if the examination is conducted as part of a criminal investigation. The investigating officer need not secure a victim's agreement to pursue prosecution of the case as a condition of obtaining the examination. Payment from the fund may not be refused for the reason that the victim later fails or refuses to cooperate in a criminal prosecution.

4.1.2. The investigating officer is responsible for contacting the prosecuting attorney or assistant prosecuting attorney in the county where the alleged offense occurred in order for the

prosecutor to approve conducting the forensic medical examination.

4.1.3. When the prosecuting attorney or assistant prosecuting attorney in the county where the alleged offense occurred is unavailable to give approval to the hospital to conduct a forensic medical exam, the investigating officer may give approval for the administration of the exam. If the investigating officer approves the exam, that officer must complete and sign the Forensic Medical Examination Fund Certification Form.

4.1.4. Regardless of who initially approves the examination, the prosecuting attorney in the county where the alleged offense occurred must sign the certification form for payment to be authorized. Therefore, the investigating officer must send a certification form signed by the officer or police agency to the appropriate prosecuting attorney. An investigating officer may transmit a signed form by fax.

4.1.5. Upon completion of the forensic medical exam, the investigating officer is responsible for promptly transferring all evidence to the WV State Police Crime Laboratory in South Charleston, West Virginia for evaluation.

#### **W. Va. C.S.R. § 168-1-7. Limitations on Use of Fund.**

7.1. A licensed medical facility performing a forensic medical examination must conduct the exam within a reasonable time of the alleged sexual assault in order to be eligible for reimbursement from the Fund. Generally, in order to obtain usable evidence, a reasonable time is as soon as possible and should not exceed seventy-two (72) hours after the time of the alleged assault. If, however, in the judgment of the prosecuting attorney or law enforcement officer, special circumstances exist and the forensic examination should be authorized and conducted even after the passage of seventy-two hours, the judgment of the prosecuting attorney or law enforcement officer will determine whether the time elapsed after the alleged assault is reasonable. This section does not impose any time limitation within which a licensed medical facility must bill in order to obtain reimbursement from the fund.

7.2. Medical exams are primarily restricted to the collection of forensic evidence.

7.3. The West Virginia Forensic Medical Examination Fund covers only the cost of forensic medical exams. The Fund does not cover the cost of any treatment of injuries, pregnancy prevention or additional testing for pregnancy or sexually transmitted diseases.

#### **W. Va. Code § 61-8B-15. Creation of a forensic medical examination fund**

There is hereby created "The Forensic Medical Examination Fund" created as a special fund in the state treasury into which shall be deposited the appropriations made to the fund by the Legislature. Expenditures from the fund shall be made by the West Virginia prosecuting attorneys institute, created by the provisions of section six [§ 7-4-6], article four, chapter seven of this code, for the payment of the costs of forensic medical examinations as they are defined in

section sixteen [§ 61-8B-16] of this article and for the reimbursement to the institute of its expenses in administering the payment of the costs from the fund.

**HISTORY:** 1996, c. 105.

**W. Va. Code § 61-8B-16. Payment for costs of forensic medical examination**

(a) When any person alleges that he or she has been the victim of an offense proscribed by this article, the West Virginia prosecuting attorneys institute shall pay to a licensed medical facility from the forensic medical examination fund the cost of the forensic medical examination for this person on the following conditions and in the following manner:

(1) The payment shall cover all reasonable, customary and usual costs of the forensic medical examination;

(2) The costs of additional nonforensic procedures performed by the licensed medical facility, including, but not limited to, prophylactic treatment, treatment of injuries, testing for pregnancy and testing for sexually transmitted diseases, may not be paid from the fund;

(3) The forensic medical examination must have been conducted within a reasonable time of the alleged violation;

(4) The licensed medical facility must apply for payment of the costs of a forensic medical examination from the fund within a reasonable time of the examination;

(5) The licensed medical facility shall submit a statement of charges to the prosecuting attorney in the county in which the alleged offense occurred and the prosecuting attorney shall certify, if proper, that the forensic medical examination was conducted as a part of a criminal investigation; and

(6) The prosecuting attorney shall, within sixty days of receipt of a statement of charges from the licensed medical facility, forward the statement of charges and the certification to the West Virginia prosecuting attorneys institute for payment from the fund and for the reimbursement of the institute from the fund for the reasonable costs of processing and recording the payment.

(b) No licensed medical facility may collect the costs of a forensic medical examination from the victim of an alleged violation of this article if the reasonable, customary and usual costs of the forensic medical examination qualifies for payment from the forensic medical examination fund as set forth in subsection (a) of this section.

**HISTORY:** 1996, c. 105; 1999, c. 219.

REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

**W. Va. Code § 61-2-27. Required reporting of gunshot and other wounds**

(a) Any medical provider who provides medical treatment to a person suffering from a wound caused by a gunshot or a knife or other sharp or pointed instrument, under circumstances which would lead a reasonable person to believe resulted from a violation of the criminal laws of this state, shall report the same to a law-enforcement agency located within the county within which such wound is treated. The report shall be made initially by telephone and shall be followed by a written report delivered to such agency within forty-eight hours following the initial report: Provided, That where two or more persons participate in the medical treatment of such wound, the obligation to report imposed by this section shall apply only to the attending physician or, if none, to the person primarily responsible for providing the medical treatment.

(b) Any medical provider person who in good faith reports a wound described in subsection (a) of this section shall be immune from any civil liability which may otherwise result solely from reporting the same.

## WISCONSIN

***Summary: There is no requirement that rape be reported. It is mandatory to report gunshot wounds and burns. In order to receive crime victim's compensation, victim must report within five days and cooperate with law enforcement.***

### STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

#### **Wis. Stat. § 949.01. Definitions.**

In this chapter:

(1) "Crime" means an act committed in this state which would constitute a crime as defined in *s. 939.12* if committed by a competent adult who has no legal defense for the act.

(1m) "Department" means the department of justice.

(2) "Dependent" means any spouse, parent, grandparent, stepparent, child, stepchild, adopted child, grandchild, brother, sister, half brother, half sister, or parent of spouse of a deceased victim who was wholly or partially dependent upon the victims income at the time of the victims death and includes any child of the victim born after the victims death.

(3) "Law enforcement agency" has the meaning designated under *s. 165.83 (1) (b)*

(4) "Medical treatment" includes medical, surgical, dental, optometric, chiropractic, podiatric and hospital care; medicines; medical, dental and surgical supplies; crutches; artificial members; appliances and training in the use of artificial members and appliances. "Medical treatment" includes any Christian Science treatment for cure or relief from the effects of injury.

(4m) "Pedestrian" has the meaning given in *s. 340.01 (43)*

(5) "Personal injury" means actual bodily harm and includes pregnancy and mental or nervous shock.

(6) "Victim" means a person who is injured or killed by an incident specified in *s. 949.03 (1) (a)*, or by any act or omission of any other person that is within the description of any of the offenses listed in *s. 949.03 (1) (b)* or within the description of the offense listed and the condition provided in *s. 949.03 (1) (c)* This definition does not apply to *s. 949.165*

**HISTORY:** 1975 c. 344, 421; 1977 c. 239; 1979 c. 189; 1981 c. 20; 1983 a. 467; 1985 a. 135 s. 83 (3); 1989 a. 140; 1995 a. 153.

**Wis. Stat. § 949.08. Limitations on awards.**

(1) No order for the payment of an award may be made unless the application was made within 1 year after the date of the personal injury or death, and the personal injury or death was the result of an incident or offense which had been reported to the police within 5 days of its occurrence or, if the incident or offense could not reasonably have been reported within such period, within 5 days of the time when a report could reasonably have been made. The department may waive the one-year requirement under this subsection in the interest of justice.

(2) No award may be ordered if the victim:

(a) Engaged in conduct which substantially contributed to the infliction of the victims injury or death or in which the victim could have reasonably foreseen could lead to the injury or death. This does not apply to awards to victims under *s. 949.03 (1) (a)*

(b) Committed a crime which caused or contributed to the victims injury or death.

(d) Has not cooperated with appropriate law enforcement agencies.

(e) Is an adult passenger in the offenders vehicle, the crime involved is specified in *s. 346.63 (2) or 940.25* , and the passenger knew the offender was committing that offense. This paragraph does not apply if the victim is also a victim of a crime specified in *s. 940.30 , 940.305 , 940.31 or 948.30*

(em) Is an adult passenger in the offenders commercial motor vehicle, the crime involved is specified in *s. 346.63 (6) or 940.25* , and the passenger knew the offender was committing that offense. This paragraph does not apply if the victim is also a victim of a crime specified in *s. 940.30 , 940.305 , 940.31 , or 948.30*

(f) Has not cooperated with the department in the administration of the program.

(g) Is included on the statewide support lien docket under *s. 49.854 (2) (b)* , unless the victim provides to the department a payment agreement that has been approved by the county child support agency under *s. 59.53 (5)* and that is consistent with rules promulgated under *s. 49.858 (2) (a)*

(2m) If a claimant other than a victim has not cooperated with the department in the administration of the program, no award may be ordered for the claimant.

(3) No award may be made to any claimant if the award would unjustly benefit the offender or accomplice.

**HISTORY:** 1975 c. 344, 421; 1979 c. 189; 1981 c. 20; 1983 a. 199; 1985 a. 242, 337; 1987 a. 27; 1987 a. 332 s. 64; 1989 a. 105, 140; 1991 a. 277; 1995 a. 404, 448; 1999 a. 9; 2003 a. 30, 97, 326.

REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

**146.995 Reporting of wounds and burn injuries.**

(1) In this section:

(a) "Crime" has the meaning specified in s. 949.01 (1).

(b) "Inpatient health care facility" has the meaning specified in s. 50.135 (1).

(2) (a) Any person licensed, certified or registered by the state under ch. 441, 448 or 455 who treats a patient suffering from any of the following shall report in accordance with par. (b):

1. A gunshot wound.

2. Any wound other than a gunshot wound if the person has reasonable cause to believe that the wound occurred as a result of a crime.

3. Second-degree or 3rd-degree burns to at least 5% of the patient's body or, due to the inhalation of superheated air, swelling of the patient's larynx or a burn to the patient's upper respiratory tract, if the person has reasonable cause to believe that the burn occurred as a result of a crime.

(b) For any mandatory report under par. (a), the person shall report the patient's name and the type of wound or burn injury involved as soon as reasonably possible to the local police department or county sheriff's office for the area where the treatment is rendered.

(c) Any such person who intentionally fails to report as required under this subsection may be required to forfeit not more than \$500.

(3) Any person reporting in good faith under sub. (2), and any inpatient health care facility that employs the person who reports, are immune from all civil and criminal liability that may result because of the report. In any proceeding, the good faith of any person reporting under this section shall be presumed.

(4) The reporting requirement under sub. (2) does not apply under any of the following circumstances:

(a) The patient is accompanied by a law enforcement officer at the time treatment is rendered.

(b) The patient's name and type of wound or burn injury have been previously reported under sub. (2).

(c) The wound is a gunshot wound and appears to have occurred at least 30 days prior to the time of treatment.

**History:** 1987 a. 233; 1991 a. 39; 1993 a. 27.

**WYOMING**

***Summary: There is no specific requirement that rape be reported; however, law enforcement is only obligated to pay for a forensic examination if the victim reports the rape to law enforcement.***

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**STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS****Wyo. Stat. § 6-2-309 Medical examination of victim; costs; use of report; minors; rights of victims; reimbursement**

(a) Promptly after receiving a report of any alleged sexual assault of the first, second or third degree, the peace officer to whom the incident is reported shall take the victim to a licensed physician for examination, unless the victim refuses the examination. If a licensed physician is unavailable, the medical examination may be made by a person qualified to conduct the examination. One (1) witness of the same sex as the victim shall be present during the examination. The examiner shall deliver a written report disclosing the results of his examination to the peace officer or his designee.

(b) In lieu of the medical examination required by subsection (a) of this section, the victim of an alleged sexual assault may receive examination by a doctor of his own choosing if this examination can be obtained without delay. The doctor shall deliver a written report disclosing the results of his examination to the peace officer handling the investigation. The victim in prosecuting an act of alleged sexual assault waives any privilege due to the doctor-patient relationship with the doctor conducting the examination as to evidence bearing on the alleged sexual assault.

(c) Repealed by Laws 1991, ch. 130, § 2.

(d) The medical report required by this section is not necessary to obtain a conviction of sexual assault. Any written report disclosing the results of an examination made pursuant to this section shall be made available to the actor or his counsel upon demand.

(e) If a report of an alleged sexual assault is received from a minor, and the parents of the minor cannot be located promptly with diligent effort, then the medical examination required by subsection (a) of this section may be conducted with the minor's consent.

(f) If a report of the alleged sexual assault is received more than ten (10) days after the alleged incident, the medical examination shall not be mandatory.

(g) Except as provided by subsection (j) of this section, any victim of an alleged sexual assault that is reported to law enforcement shall be reimbursed for medical examination costs directly resulting from the sexual assault. The investigating law enforcement agency shall be

liable for any medical examination costs relating to the investigation or prosecution of the sexual assault. These investigation costs shall include the following:

(i) The cost of gathering evidence as outlined in the Wyoming sexual assault evidence kit; and

(ii) Any other examinations authorized by law enforcement to aid in the investigation and prosecution of the sexual assault.

(h) Except as provided by subsection (j) of this section, any medical examination costs directly incurred by a sexual assault victim that are not covered by subsection (g) of this section, or other collateral source, shall be submitted to the victim services division within the office of the attorney general for determination of eligibility for payment from the crime victims compensation account established by W.S. 1-40-114. All requests for compensation from the account shall be subject to the eligibility guidelines set forth in the Crime Victims Compensation Act, W.S. 1-40-101 through 1-40-119.

(j) A convicted offender of a sexual assault shall be ordered to reimburse any costs incurred under subsections (g) and (h) of this section and any other costs incurred as a direct result of the sexual assault.

(k) Each reported victim of a sexual assault shall be informed of the rights enumerated in this section. The victim shall also be informed of available medical, legal and advocacy services.

**HISTORY:** Laws 1982, ch. 75, § 3; 1983, ch. 171, § 1; 1991, ch. 130, § § 1, 2; 1994, ch. 61, § 2; 1998, ch. 81, § 2.

## FEDERAL LAWS

### The Health Insurance Portability and Accountability Act of 1996 (HIPAA) 45 CFR §§ 160 – 164

- Provides extensive privacy rights to patients' medical information and records
- Federal law preempts state law unless state law is more restrictive
- General Rule – A covered entity may not use or disclose protected health information, except as permitted or required by the regulation
- Some circumstances when covered entities may disclose protected health information include:
  - With written authorization or after giving patient opportunity to agree or object (45 CFR §§ 164.508, 164.510)
  - For law enforcement purposes (45 CFR § 164.512(f))
  - Disclosure of abuse, neglect, domestic violence (45 CFR § 164.512(c))

#### **45 CFR § 164.512. Uses and disclosures for which an authorization or opportunity to agree or object is not required.**

A covered entity may use or disclose protected health information without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given orally.

(a) Standard: Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.

(2) A covered entity must meet the requirements described in paragraph (c), (e), or (f) of this section for uses or disclosures required by law.

(b) Standard: uses and disclosures for public health activities. (1) Permitted disclosures. A covered entity may disclose protected health information for the public health activities and purposes described in this paragraph to:

(i) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;

(ii) A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;

(iii) A person subject to the jurisdiction of the Food and Drug Administration (FDA) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity. Such purposes include:

(A) To collect or report adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations;

(B) To track FDA-regulated products;

(C) To enable product recalls, repairs, or replacement, or lookback (including locating and notifying individuals who have received products that have been recalled, withdrawn, or are the subject of lookback); or

(D) To conduct post marketing surveillance;

(iv) A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the covered entity or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation; or

(v) An employer, about an individual who is a member of the workforce of the employer, if:

(A) The covered entity is a covered health care provider who is a member of the workforce of such employer or who provides health care to the individual at the request of the employer:

(1) To conduct an evaluation relating to medical surveillance of the workplace; or

(2) To evaluate whether the individual has a work-related illness or injury;

(B) The protected health information that is disclosed consists of findings concerning a work-related illness or injury or a workplace-related medical surveillance;

(C) The employer needs such findings in order to comply with its obligations, under 29 CFR parts 1904 through 1928, 30 CFR parts 50 through 90, or under state law having a similar purpose, to record such illness or injury or to carry out responsibilities for workplace medical surveillance; and

(D) The covered health care provider provides written notice to the individual that protected health information relating to the medical surveillance of the workplace and work-related illnesses and injuries is disclosed to the employer:

(1) By giving a copy of the notice to the individual at the time the health care is provided; or

(2) If the health care is provided on the work site of the employer, by posting the notice in a prominent place at the location where the health care is provided.

(2) Permitted uses. If the covered entity also is a public health authority, the covered entity is permitted to use protected health information in all cases in which it is permitted to disclose such information for public health activities under paragraph (b)(1) of this section.

(c) Standard: Disclosures about victims of abuse, neglect or domestic violence. (1) Permitted disclosures. Except for reports of child abuse or neglect permitted by paragraph (b)(1)(ii) of this section, a covered entity may disclose protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence:

(i) To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law;

(ii) If the individual agrees to the disclosure; or

(iii) To the extent the disclosure is expressly authorized by statute or regulation and:

(A) The covered entity, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or

(B) If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information for which disclosure is sought is not intended to be used against the individual and that an immediate

enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.

(2) Informing the individual. A covered entity that makes a disclosure permitted by paragraph (c)(1) of this section must promptly inform the individual that such a report has been or will be made, except if:

(i) The covered entity, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or

(ii) The covered entity would be informing a personal representative, and the covered entity reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

(d) Standard: Uses and disclosures for health oversight activities. (1) Permitted disclosures. A covered entity may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:

(i) The health care system;

(ii) Government benefit programs for which health information is relevant to beneficiary eligibility;

(iii) Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or

(iv) Entities subject to civil rights laws for which health information is necessary for determining compliance.

(2) Exception to health oversight activities. For the purpose of the disclosures permitted by paragraph (d)(1) of this section, a health oversight activity does not include an investigation or other activity in which the individual is the subject of the investigation or activity and such investigation or other activity does not arise out of and is not directly related to:

(i) The receipt of health care;

(ii) A claim for public benefits related to health; or

(iii) Qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services.

(3) Joint activities or investigations. Notwithstanding paragraph (d)(2) of this section, if a health oversight activity or investigation is conducted in conjunction with an oversight activity or investigation relating to a claim for public benefits not related to health, the joint activity or investigation is considered a health oversight activity for purposes of paragraph (d) of this section.

(4) Permitted uses. If a covered entity also is a health oversight agency, the covered entity may use protected health information for health oversight activities as permitted by paragraph (d) of this section.

(e) Standard: Disclosures for judicial and administrative proceedings.

(1) Permitted disclosures. A covered entity may disclose protected health information in the course of any judicial or administrative proceeding:

(i) In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order; or

(ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if:

(A) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or

(B) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section.

(iii) For the purposes of paragraph (e)(1)(ii)(A) of this section, a covered entity receives satisfactory assurances from a party seeking protecting health information if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:

(A) The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the

individual's last known address);

(B) The notice included sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection to the court or administrative tribunal; and

(C) The time for the individual to raise objections to the court or administrative tribunal has elapsed, and:

(1) No objections were filed; or

(2) All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.

(iv) For the purposes of paragraph (e)(1)(ii)(B) of this section, a covered entity receives satisfactory assurances from a party seeking protected health information, if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:

(A) The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or

(B) The party seeking the protected health information has requested a qualified protective order from such court or administrative tribunal.

(v) For purposes of paragraph (e)(1) of this section, a qualified protective order means, with respect to protected health information requested under paragraph (e)(1)(ii) of this section, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:

(A) Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and

(B) Requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.

(vi) Notwithstanding paragraph (e)(1)(ii) of this section, a covered entity may disclose protected health information in response to lawful process described in paragraph (e)(1)(ii) of this section without receiving satisfactory assurance under paragraph (e)(1)(ii)(A) or (B) of this section, if the covered entity makes reasonable efforts to provide notice to the individual sufficient to meet

the requirements of paragraph (e)(1)(iii) of this section or to seek a qualified protective order sufficient to meet the requirements of paragraph (e)(1)(iv) of this section.

(2) Other uses and disclosures under this section. The provisions of this paragraph do not supersede other provisions of this section that otherwise permit or restrict uses or disclosures of protected health information.

(f) Standard: Disclosures for law enforcement purposes. A covered entity may disclose protected health information for a law enforcement purpose to a law enforcement official if the conditions in paragraphs (f)(1) through (f)(6) of this section are met, as applicable.

(1) Permitted disclosures: Pursuant to process and as otherwise required by law. A covered entity may disclose protected health information:

(i) As required by law including laws that require the reporting of certain types of wounds or other physical injuries, except for laws subject to paragraph (b)(1)(ii) or (c)(1)(i) of this section; or

(ii) In compliance with and as limited by the relevant requirements of:

(A) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;

(B) A grand jury subpoena; or

(C) An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:

(1) The information sought is relevant and material to a legitimate law enforcement inquiry;

(2) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and

(3) De-identified information could not reasonably be used.

(2) Permitted disclosures: Limited information for identification and location purposes. Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that:

(i) The covered entity may disclose only the following information:

(A) Name and address;

(B) Date and place of birth;

(C) Social security number;

(D) ABO blood type and rh factor;

(E) Type of injury;

(F) Date and time of treatment;

(G) Date and time of death, if applicable; and

(H) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

(ii) Except as permitted by paragraph (f)(2)(i) of this section, the covered entity may not disclose for the purposes of identification or location under paragraph (f)(2) of this section any protected health information related to the individual's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue.

(3) Permitted disclosure: Victims of a crime. Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information about an individual who is or is suspected to be a victim of a crime, other than disclosures that are subject to paragraph (b) or (c) of this section, if:

(i) The individual agrees to the disclosure; or

(ii) The covered entity is unable to obtain the individual's agreement because of incapacity or other emergency circumstance, provided that:

(A) The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim;

(B) The law enforcement official represents that immediate law enforcement activity that

depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and

(C) The disclosure is in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

(4) Permitted disclosure: Decedents. A covered entity may disclose protected health information about an individual who has died to a law enforcement official for the purpose of alerting law enforcement of the death of the individual if the covered entity has a suspicion that such death may have resulted from criminal conduct.

(5) Permitted disclosure: Crime on premises. A covered entity may disclose to a law enforcement official protected health information that the covered entity believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the covered entity.

(6) Permitted disclosure: Reporting crime in emergencies. (i) A covered health care provider providing emergency health care in response to a medical emergency, other than such emergency on the premises of the covered health care provider, may disclose protected health information to a law enforcement official if such disclosure appears necessary to alert law enforcement to:

(A) The commission and nature of a crime;

(B) The location of such crime or of the victim(s) of such crime; and

(C) The identity, description, and location of the perpetrator of such crime.

(ii) If a covered health care provider believes that the medical emergency described in paragraph (f)(6)(i) of this section is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, paragraph (f)(6)(i) of this section does not apply and any disclosure to a law enforcement official for law enforcement purposes is subject to paragraph (c) of this section.

(g) Standard: Uses and disclosures about decedents. (1) Coroners and medical examiners. A covered entity may disclose protected health information to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law. A covered entity that also performs the duties of a coroner or medical examiner may use protected health information for the purposes described in this paragraph.

(2) Funeral directors. A covered entity may disclose protected health information to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent. If necessary for funeral directors to carry out their duties, the covered entity may

disclose the protected health information prior to, and in reasonable anticipation of, the individual's death.

(h) Standard: Uses and disclosures for cadaveric organ, eye or tissue donation purposes. A covered entity may use or disclose protected health information to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation.

(i) Standard: Uses and disclosures for research purposes. (1) Permitted uses and disclosures. A covered entity may use or disclose protected health information for research, regardless of the source of funding of the research, provided that:

(i) Board approval of a waiver of authorization. The covered entity obtains documentation that an alteration to or waiver, in whole or in part, of the individual authorization required by § 164.508 for use or disclosure of protected health information has been approved by either:

(A) An Institutional Review Board (IRB), established in accordance with 7 CFR 1c.107, 10 CFR 745.107, 14 CFR 1230.107, 15 CFR 27.107, 16 CFR 1028.107, 21 CFR 56.107, 22 CFR 225.107, 24 CFR 60.107, 28 CFR 46.107, 32 CFR 219.107, 34 CFR 97.107, 38 CFR 16.107, 40 CFR 26.107, 45 CFR 46.107, 45 CFR 690.107, OR 49 CFR 11.107; or

(B) A privacy board that:

(1) Has members with varying backgrounds and appropriate professional competency as necessary to review the effect of the research protocol on the individual's privacy rights and related interests;

(2) Includes at least one member who is not affiliated with the covered entity, not affiliated with any entity conducting or sponsoring the research, and not related to any person who is affiliated with any of such entities; and

(3) Does not have any member participating in a review of any project in which the member has a conflict of interest.

(ii) Reviews preparatory to research. The covered entity obtains from the researcher representations that:

(A) Use or disclosure is sought solely to review protected health information as necessary to prepare a research protocol or for similar purposes preparatory to research;

(B) No protected health information is to be removed from the covered entity by the researcher in the course of the review; and

(C) The protected health information for which use or access is sought is necessary for the research purposes.

(iii) Research on decedent's information. The covered entity obtains from the researcher:

(A) Representation that the use or disclosure sought is solely for research on the protected health information of decedents;

(B) Documentation, at the request of the covered entity, of the death of such individuals; and

(C) Representation that the protected health information for which use or disclosure is sought is necessary for the research purposes.

(2) Documentation of waiver approval. For a use or disclosure to be permitted based on documentation of approval of an alteration or waiver, under paragraph (i)(1)(i) of this section, the documentation must include all of the following:

(i) Identification and date of action. A statement identifying the IRB or privacy board and the date on which the alteration or waiver of authorization was approved;

(ii) Waiver criteria. A statement that the IRB or privacy board has determined that the alteration or waiver, in whole or in part, of authorization satisfies the following criteria:

(A) The use or disclosure of protected health information involves no more than a minimal risk to the privacy of individuals, based on, at least, the presence of the following elements;

(1) An adequate plan to protect the identifiers from improper use and disclosure;

(2) An adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the research, unless there is a health or research justification for retaining the identifiers or such retention is otherwise required by law; and

(3) Adequate written assurances that the protected health information will not be reused or disclosed to any other person or entity, except as required by law, for authorized oversight of the research study, or for other research for which the use or disclosure of protected health information would be permitted by this subpart;

(B) The research could not practicably be conducted without the waiver or alteration; and

(C) The research could not practicably be conducted without access to and use of the protected health information.

(iii) Protected health information needed. A brief description of the protected health information for which use or access has been determined to be necessary by the IRB or privacy board has determined, pursuant to paragraph (i)(2)(ii)(C) of this section;

(iv) Review and approval procedures. A statement that the alteration or waiver of authorization has been reviewed and approved under either normal or expedited review procedures, as follows:

(A) An IRB must follow the requirements of the Common Rule, including the normal review procedures (7 CFR 1c.108(b), 10 CFR 745.108(b), 14 CFR 1230.108(b), 15 CFR 27.108(b), 16 CFR 1028.108(b), 21 CFR 56.108(b), 22 CFR 225.108(b), 24 CFR 60.108(b), 28 CFR 46.108(b), 32 CFR 219.108(b), 34 CFR 97.108(b), 38 CFR 16.108(b), 40 CFR 26.108(b), 45 CFR 46.108(b), 45 CFR 690.108(b), or 49 CFR 11.108(b)) or the expedited review procedures (7 CFR 1c.110, 10 CFR 745.110, 14 CFR 1230.110, 15 CFR 27.110, 16 CFR 1028.110, 21 CFR 56.110, 22 CFR 225.110, 24 CFR 60.110, 28 CFR 46.110, 32 CFR 219.110, 34 CFR 97.110, 38 CFR 16.110, 40 CFR 26.110, 45 CFR 46.110, 45 CFR 690.110, or 49 CFR 11.110);

(B) A privacy board must review the proposed research at convened meetings at which a majority of the privacy board members are present, including at least one member who satisfies the criterion stated in paragraph (i)(1)(i)(B)(2) of this section, and the alteration or waiver of authorization must be approved by the majority of the privacy board members present at the meeting, unless the privacy board elects to use an expedited review procedure in accordance with paragraph (i)(2)(iv)(C) of this section;

(C) A privacy board may use an expedited review procedure if the research involves no more than minimal risk to the privacy of the individuals who are the subject of the protected health information for which use or disclosure is being sought. If the privacy board elects to use an expedited review procedure, the review and approval of the alteration or waiver of authorization may be carried out by the chair of the privacy board, or by one or more members of the privacy board as designated by the chair; and

(v) Required signature. The documentation of the alteration or waiver of authorization must be signed by the chair or other member, as designated by the chair, of the IRB or the privacy board, as applicable.

(j) Standard: Uses and disclosures to avert a serious threat to health or safety. (1) Permitted disclosures. A covered entity may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the covered entity, in good faith,

believes the use or disclosure:

(i)(A) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and

(B) Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or

(ii) Is necessary for law enforcement authorities to identify or apprehend an individual:

(A) Because of a statement by an individual admitting participation in a violent crime that the covered entity reasonably believes may have caused serious physical harm to the victim; or

(B) Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody, as those terms are defined in § 164.501.

(2) Use or disclosure not permitted. A use or disclosure pursuant to paragraph (j)(1)(ii)(A) of this section may not be made if the information described in paragraph (j)(1)(ii)(A) of this section is learned by the covered entity:

(i) In the course of treatment to affect the propensity to commit the criminal conduct that is the basis for the disclosure under paragraph (j)(1)(ii)(A) of this section, or counseling or therapy; or

(ii) Through a request by the individual to initiate or to be referred for the treatment, counseling, or therapy described in paragraph (j)(2)(i) of this section.

(3) Limit on information that may be disclosed. A disclosure made pursuant to paragraph (j)(1)(ii)(A) of this section shall contain only the statement described in paragraph (j)(1)(ii)(A) of this section and the protected health information described in paragraph (f)(2)(i) of this section.

(4) Presumption of good faith belief. A covered entity that uses or discloses protected health information pursuant to paragraph (j)(1) of this section is presumed to have acted in good faith with regard to a belief described in paragraph (j)(1)(i) or (ii) of this section, if the belief is based upon the covered entity's actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.

(k) Standard: Uses and disclosures for specialized government functions. (1) Military and veterans activities. (i) Armed Forces personnel. A covered entity may use and disclose the protected health information of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission, if the appropriate military authority has published by notice in the Federal

Register the following information:

(A) Appropriate military command authorities; and

(B) The purposes for which the protected health information may be used or disclosed.

(ii) Separation or discharge from military service. A covered entity that is a component of the Departments of Defense or Transportation may disclose to the Department of Veterans Affairs (DVA) the protected health information of an individual who is a member of the Armed Forces upon the separation or discharge of the individual from military service for the purpose of a determination by DVA of the individual's eligibility for or entitlement to benefits under laws administered by the Secretary of Veterans Affairs.

(iii) Veterans. A covered entity that is a component of the Department of Veterans Affairs may use and disclose protected health information to components of the Department that determine eligibility for or entitlement to, or that provide, benefits under the laws administered by the Secretary of Veterans Affairs.

(iv) Foreign military personnel. A covered entity may use and disclose the protected health information of individuals who are foreign military personnel to their appropriate foreign military authority for the same purposes for which uses and disclosures are permitted for Armed Forces personnel under the notice published in the Federal Register pursuant to paragraph (k)(1)(i) of this section.

(2) National security and intelligence activities. A covered entity may disclose protected health information to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act (50 U.S.C. 401 et seq.) and implementing authority (e.g., Executive Order 12333).

(3) Protective services for the President and others. A covered entity may disclose protected health information to authorized federal officials for the provision of protective services to the President or other persons authorized by 18 U.S.C. 3056, or to foreign heads of state or other persons authorized by 22 U.S.C. 2709 (a)(3), or to for the conduct of investigations authorized by 18 U.S.C. 871 and 879.

(4) Medical suitability determinations. A covered entity that is a component of the Department of State may use protected health information to make medical suitability determinations and may disclose whether or not the individual was determined to be medically suitable to the officials in the Department of State who need access to such information for the following purposes:

(i) For the purpose of a required security clearance conducted pursuant to Executive Orders

10450 and 12698;

(ii) As necessary to determine worldwide availability or availability for mandatory service abroad under sections 101(a)(4) and 504 of the Foreign Service Act; or

(iii) For a family to accompany a Foreign Service member abroad, consistent with section 101(b)(5) and 904 of the Foreign Service Act.

(5) Correctional institutions and other law enforcement custodial situations. (i) Permitted disclosures. A covered entity may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual protected health information about such inmate or individual, if the correctional institution or such law enforcement official represents that such protected health information is necessary for:

(A) The provision of health care to such individuals;

(B) The health and safety of such individual or other inmates;

(C) The health and safety of the officers or employees of or others at the correctional institution;

(D) The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;

(E) Law enforcement on the premises of the correctional institution; and

(F) The administration and maintenance of the safety, security, and good order of the correctional institution.

(ii) Permitted uses. A covered entity that is a correctional institution may use protected health information of individuals who are inmates for any purpose for which such protected health information may be disclosed.

(iii) No application after release. For the purposes of this provision, an individual is no longer an inmate when released on parole, probation, supervised release, or otherwise is no longer in lawful custody.

(6) Covered entities that are government programs providing public benefits. (i) A health plan that is a government program providing public benefits may disclose protected health information relating to eligibility for or enrollment in the health plan to another agency administering a government program providing public benefits if the sharing of eligibility or enrollment information among such government agencies or the maintenance of such

information in a single or combined data system accessible to all such government agencies is required or expressly authorized by statute or regulation.

(ii) A covered entity that is a government agency administering a government program providing public benefits may disclose protected health information relating to the program to another covered entity that is a government agency administering a government program providing public benefits if the programs serve the same or similar populations and the disclosure of protected health information is necessary to coordinate the covered functions of such programs or to improve administration and management relating to the covered functions of such programs.

(l) Standard: Disclosures for workers' compensation. A covered entity may disclose protected health information as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.

## FEDERAL REPORTING REQUIREMENTS

*Summary: There is no federal mandatory reporting requirement. The Attorney General or the head of another department or agency that conducts an investigation of a sexual assault shall pay, either directly or by reimbursement of payment by the victim, the cost of a physical examination of the victim which an investigating officer determines was necessary or useful for evidentiary purposes.*

### FEDERAL STATUTES on PAYMENTS for FORENSIC MEDICAL EXAMINATIONS in SEXUAL ASSAULT CASES

#### **42 USCS § 10607. Services to victims**

(a) Designation of responsible officials. The head of each department and agency of the United States engaged in the detection, investigation, or prosecution of crime shall designate by names and office titles the persons who will be responsible for identifying the victims of crime and performing the services described in subsection (c) at each stage of a criminal case.

(b) Identification of victims. At the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, a responsible official shall--

(1) identify the victim or victims of a crime;

(2) inform the victims of their right to receive, on request, the services described in subsection (c); and

(3) inform each victim of the name, title, and business address and telephone number of the responsible official to whom the victim should address a request for each of the services described in subsection (c).

(c) Description of services.

(1) A responsible official shall--

(A) inform a victim of the place where the victim may receive emergency medical and social services;

(B) inform a victim of any restitution or other relief to which the victim may be entitled under this or any other law and [the] manner in which such relief may be obtained;

(C) inform a victim of public and private programs that are available to provide counseling, treatment, and other support to the victim; and

(D) assist a victim in contacting the persons who are responsible for providing the services and relief described in subparagraphs (A), (B), and (C).

(2) A responsible official shall arrange for a victim to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender.

(3) During the investigation and prosecution of a crime, a responsible official shall provide a victim the earliest possible notice of--

(A) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;

(B) the arrest of a suspected offender;

(C) the filing of charges against a suspected offender;

(D) the scheduling of each court proceeding that the witness is either required to attend or, under section 1102(b)(4), is entitled to attend;

(E) the release or detention status of an offender or suspected offender;

(F) the acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial; and

(G) the sentence imposed on an offender, including the date on which the offender will be eligible for parole.

(4) During court proceedings, a responsible official shall ensure that a victim is provided a waiting area removed from and out of the sight and hearing of the defendant and defense witnesses.

(5) After trial, a responsible official shall provide a victim the earliest possible notice of--

(A) the scheduling of a parole hearing for the offender;

(B) the escape, work release, furlough, or any other form of release from custody of the offender; and

(C) the death of the offender, if the offender dies while in custody.

(6) At all times, a responsible official shall ensure that any property of a victim that is being held for evidentiary purposes be maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes.

(7) The Attorney General or the head of another department or agency that conducts an investigation of a sexual assault shall pay, either directly or by reimbursement of payment by the victim, the cost of a physical examination of the victim which an investigating officer determines was necessary or useful for evidentiary purposes. The Attorney General shall provide for the payment of the cost of up to 2 anonymous and confidential tests of the victim for sexually transmitted diseases, including HIV, gonorrhea, herpes, chlamydia, and syphilis, during the 12 months following sexual assaults that pose a risk of transmission, and the cost of a counseling session by a medically trained professional on the accuracy of such tests and the risk of transmission of sexually transmitted diseases to the victim as the result of the assault. A victim may waive anonymity and confidentiality of any tests paid for under this section.

(8) A responsible official shall provide the victim with general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each.

(d) No cause of action or defense. This section does not create a cause of action or defense in favor of any person arising out of the failure of a responsible person to provide information as required by subsection (b) or (c).

(e) Definitions. For the purposes of this section--

(1) the term "responsible official" means a person designated pursuant to subsection (a) to perform the functions of a responsible official under that section; and

(2) the term "victim" means a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime, including--

(A) in the case of a victim that is an institutional entity, an authorized representative of the entity; and

(B) in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, one of the following (in order of preference):

- (i) a spouse;
- (ii) a legal guardian;
- (iii) a parent;
- (iv) a child;
- (v) a sibling;
- (vi) another family member; or
- (vii) another person designated by the court.

**HISTORY:**

(Nov. 29, 1990, P.L. 101-647, Title V, § 503, 104 Stat. 4820; Sept. 13, 1994, P.L. 103-322, Title IV, Subtitle E, § 40503(a), 108 Stat. 1946.)

**28 CFR 90.2. Definitions.**

(a) Domestic violence. (1) As used in this Part, "domestic violence" includes felony or misdemeanor crimes of violence (including threats or attempts) committed:

- (i) By a current or former spouse of the victim;
- (ii) By a person with whom the victim shares a child in common;
- (iii) By a person who is co-habiting with or has co-habited with the victim as a spouse;
- (iv) By a person similarly situated to a spouse of the victim under domestic or family violence laws of the jurisdiction receiving grant monies; or
- (v) By any other adult person against a victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction receiving grant monies. Section 2003(1).

(2) For the purposes of this Program, "domestic violence" also includes any crime of violence considered to be an act of domestic violence according to State law.

(b) Forensic medical examination. The term "forensic medical examination" means an examination provided to a sexual assault victim by medical personnel trained to gather evidence of a sexual assault in a manner suitable for use in a court of law.

(1) The examination should include at a minimum:

- (i) examination of physical trauma;
- (ii) determination of penetration or force;
- (iii) patient interview; and
- (iv) collection and evaluation of evidence.

(2) The inclusion of additional procedures (e.g., testing for sexually transmitted diseases) to obtain evidence may be determined by the State, Indian tribal government, or unit of local government in accordance with its current laws, policies, and practices.

(c) Indian tribe. The term "Indian Tribe" means a tribe, band, pueblo, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation [as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq. .)], that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. Section 2003(3).

(d) Law enforcement. The term "law enforcement" means a public agency charged with policing functions, including any of its component bureaus (such as governmental victim services programs). Section 2003(4).

(e) Prosecution. For the purposes of this Program, the term "prosecution" means any public office or agency charged with direct responsibility for prosecuting criminal offenders, including such office's or agency's component departments or bureaus (such as governmental victims services programs). Prosecution support services, such as overseeing or participating in Statewide or multi-jurisdictional domestic violence task forces, conducting training for State and local prosecutors or enforcing victim compensation and domestic violence-related restraining orders shall be considered "direct responsibility" for purposes of this program. Section 2003(5).

(f) Sexual assault. The term "sexual assault" means any conduct proscribed by Chapter 109A of Title 18, United States Code, and includes both assaults committed by offenders who are strangers to the victim and assaults committed by offenders who are known or related by blood or marriage to the victim. Section 2003(6).

(g) State. The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(h) Unit of local government. For the purposes of Subpart B of this part, the term "unit of local government" means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, or Indian tribe which performs law enforcement functions as determined by the Secretary of Interior, or for the purpose of assistance eligibility, any agency of the District of Columbia government or the United States Government performing law enforcement functions in and for the District of Columbia and the Trust Territory of the Pacific Islands.

(i) Victim services. The term "victim services" means a nonprofit, nongovernmental organization, that assist victims of domestic violence and/or sexual assault victims. Included in this definition are rape crisis centers, battered women's shelters, and other sexual assault or domestic violence programs, such as nonprofit, nongovernmental organizations assisting domestic violence or sexual assault victims through the legal process. (Section 2003(8).)

(1) For the purposes of this Program, funding may include support for lawyer and nonlawyer advocates, including specialized domestic violence court advocates. Legal or defense services for perpetrators of violence against women may not be supported with grant funds.

(2) The definition also encompasses Indian victim assistance programs and Statewide domestic violence and sexual assault coalitions to the extent they provide direct services to domestic violence and sexual assault victims.

(3) Governmental victim services programs attached to a law enforcement agency or a prosecutor's office may apply for the portions of the State grant designated for law enforcement and prosecution. Governmental victim services programs contracting with nonprofit organizations (e.g., a county nonprofit shelter) are eligible to apply for the portion of the State grant designated for nonprofit, nongovernmental victim services. Governmental victim services programs that are not connected to a law enforcement agency or a prosecutor's office and are not considered nonprofit organizations may apply for funding through the remaining portion of the State grant that is not designated for a specific program area.

**HISTORY:** [60 FR 19478, Apr. 18, 1995]

**28 CFR 90.14. Forensic medical examination payment requirement.**

(a) For the purpose of this Subpart B, a State, Indian tribal government or unit of local government shall not be entitled to funds under this Program unless the State, Indian tribal government, unit of local government, or another governmental entity incurs the full out-of-pocket costs of forensic medical examinations for victims of sexual assault. "Full out-of-pocket costs" means any expense that may be charged to a victim in connection with a forensic medical examination for the purpose of gathering evidence of a sexual assault (e.g., the full cost of the

examination, an insurance deductible, or a fee established by the facility conducting the examination). Section 2005(a)(1). For individuals covered by insurance, "full out-of-pocket costs" means any costs that the insurer does not pay.

(b) A State, Indian tribal government, or unit of local government shall be deemed to incur the full out-of-pocket costs of forensic medical examinations for victims of sexual assault if that governmental entity or some other:

- (1) Provides such examinations to victims free of charge;
- (2) Arranges for victims to obtain such examinations free of charge; or
- (3) Reimburses victims for the cost of such examinations if:

(i) The reimbursement covers the full out-of-pocket costs of such examinations, without any deductible requirement and/or maximum limit on the amount of reimbursement;

(ii) The governmental entity permits victims to apply for reimbursement for not less than one year from the date of the examination;

(iii) The governmental entity provides reimbursement to the victim not later than ninety days after written notification of the victim's expense; and

(iv) The governmental entity provides information at the time of the examination to all victims, including victims with limited or no English proficiency, regarding how to obtain reimbursement. Section 2005(b).

(c) Coverage of the cost of additional procedures (e.g., testing for sexually transmitted diseases) may be determined by the State or governmental entity responsible for paying the costs; however, formula grant funds cannot be used to pay for the cost of the forensic medical examination or any additional procedures.

**HISTORY:** [60 FR 19479, Apr. 18, 1995]

**18 USCS § 2264. Restitution.**

(a) In general. Notwithstanding section 3663 or 3663A [18 USCS § 3663 or 3663A], and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter [18 USCS § § 2261 et seq.].

(b) Scope and nature of order.

(1) Directions. The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).

(2) Enforcement. An order of restitution under this section shall be issued and enforced in accordance with section 3664 [18 USCS § 3664] in the same manner as an order under section 3663A [18 USCS § 3663A].

(3) Definition. For purposes of this subsection, the term "full amount of the victim's losses" includes any costs incurred by the victim for--

- (A) medical services relating to physical, psychiatric, or psychological care;
- (B) physical and occupational therapy or rehabilitation;
- (C) necessary transportation, temporary housing, and child care expenses;
- (D) lost income;
- (E) attorneys' fees, plus any costs incurred in obtaining a civil protection order; and
- (F) any other losses suffered by the victim as a proximate result of the offense.

(4) Order mandatory.

(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of--

- (i) the economic circumstances of the defendant; or
- (ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries

from the proceeds of insurance or any other source.

(C), (D) [Deleted]

(5)--(10) [Deleted]

(c) Victim defined. For purposes of this section, the term "victim" means the individual harmed as a result of a commission of a crime under this chapter [18 USCS § 2261 et seq.], including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

(d)--(g) [Deleted]

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