

FREQUENTLY ASKED QUESTIONS

Regarding Forensic Medical Exams and Payments for Victims of Sexual Assault Who Do Not Want to Cooperate with Law Enforcement

Q. What are the S.T.O.P. Violence Against Women Act (VAWA) changes that are required?

A. When the S.T.O.P. Violence Against Women Act was reauthorized in 2005, one of the changes made was an allowance for victims of sexual assault to have forensic medical examinations completed without cooperating with law enforcement or participating in the criminal justice system. In addition, victims who choose not to cooperate cannot be charged for the exam. If Colorado is not compliant with this change by January of 2009 the state may lose all of its S.T.O.P. VAWA funding, approximately 1.7 million dollars annually.

Q. If a victim does not want the crime reported to law enforcement, does the medical facility still have to contact the law enforcement agency under the mandatory reporting law?

A. Yes! This statute does not affect the requirements for licensed medical professionals. Under C.R.S. §12-36-135 (1), any injury that occurs due to a criminal act must be reported to the law enforcement agency in the jurisdiction where the hospital is located.

Q. Does this statute require that all reports to law enforcement be anonymous?

A. No! This statute does not provide for victims to remain anonymous due to our mandatory reporting laws. The name of the victim will be provided with the forensic evidence collection kit that is given to the law enforcement agency for storage. The law enforcement agency must store the kit for two years.

Q. Who Should Pay for the Exam?

A. If a victim contacts the law enforcement agency directly or if she/he comes to a medical facility that provides forensic medical exams for sexual assault cases and wants to report the crime, the law enforcement agency where the crime occurred would pay for the exam.

If a victim does not want law enforcement involved but wants to have a forensic medical exam done in case she/he wants to have the crime investigated at a later date, the Division of Criminal Justice Fund would pay for the exam.

Q. How will the payment work?

A. If law enforcement is involved with the case prior to the forensic exam being requested or if the victim presents at a medical facility and requests an exam and wants to cooperate

with the investigation of the case, then the medical facility will bill the law enforcement agency directly as is done currently.

If the victim does not want to cooperate with law enforcement, then the medical facility will send the bill to DCJ. When DCJ gets the bill, it will contact the law enforcement agency that picked up the kit to ascertain whether the victim has chosen to cooperate with the investigation of the case at this point in time. If the victim has decided to cooperate with the investigation of the case, the bill will be sent to the law enforcement agency for payment to the medical facility. DCJ will notify the medical facility that law enforcement will be paying the bill.

If the law enforcement agency tells DCJ the victim has not contacted them to pursue the investigation of the case, DCJ will pay the medical facility for the forensic medical exam.

Q. What will the DCJ Fund pay for as part of the exam?

- A. The DCJ Fund will pay for the same expenses that law enforcement currently pays as part of the forensic medical exam. The amount being charged should be the same whether law enforcement or DCJ is paying for the exam.

Q. Where is the money coming from to pay for these exams?

- A. The funds used to pay for these exams will come from the federal S.T.O.P. VAWA grant that Colorado receives annually. These funds are used to provide grants to victim services, law enforcement, prosecution and courts programs that provide services to victims of domestic violence, sexual assault, stalking and dating violence. Any funds expended to pay for forensic exams will be unavailable for other purposes.

Q. Will victim compensation pay for the other medical and prescription drug expenses if the victim does not want to cooperate with the investigation of the crime?

- A. Victim compensation programs usually provide financial awards when the victim has cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant. However, each of the twenty-two victim compensation boards operates with its own board that makes decisions on individual cases. Victims should not plan on victim compensation paying for any expenses but she/he may contact the victim compensation in the judicial district where the crime occurred to discuss his/her particular situation. Victims can contact DCJ at 303-239-5719 or 1-888-282-1080 to find out the name and phone number of the victim compensation program in their judicial district.

Q. What information should the medical facility give to law enforcement?

- A. The medical facility should provide the completed forensic evidence collection kit with the information related to the exam and the victim's name. The medical personnel should note on the outside of the kit envelope of the exam that **THE VICTIM DOES NOT WANT TO COOPERATE WITH LAW ENFORCEMENT AT THIS TIME.**

Q. Does the new DNA bill (HB 08-1397) impact the length of time that the forensic evidence collection kits should be kept?

A. Law enforcement agencies should contact the district attorney's office in their jurisdiction regarding specific issues related to the length of time evidence from forensic exams should be kept. However, according to HB 08-1217, law enforcement is required to maintain the evidence from the forensic exam for 2 years if the victim chooses not to cooperate with law enforcement. In this instance, a report has been made but an investigation has not been initiated. If at any point an investigation is commenced, either through the victim's cooperation or through independent action by the law enforcement agency, the provisions of HB 08-1397 would require the retention of the samples from the forensic evidence collection kit as evidence and this statute (HB 08-1397) would apply. The specific retention requirements vary depending on the nature of the crime and the results of any prosecution. However, this opinion is not binding authority and you are encouraged to consult with the District Attorney's Office in your jurisdiction regarding specific issues concerning the length of time samples from forensic medical exams should be retained.

Q. What if the victim is a minor? Would the child abuse laws still apply?

A. YES! All relevant child abuse statutes apply; forensic medical exams done for child abuse cases are not covered under this statute and will not be paid with VAWA funds.

Q. What if the sexual assault crime is also a domestic violence crime? Should law enforcement be contacted immediately and can law enforcement investigate the domestic violence crime?

A. If the sexual assault crime also includes a domestic violence element, both will need to be reported to law enforcement since Colorado has mandatory reporting. Law enforcement will need to address the domestic violence aspect in the same manner that they currently do. The only difference is that victims can now get the forensic medical exam without a referral from law enforcement.

Q. Can men receive a forensic exam paid for by VAWA funds?

A. Yes, men can receive a forensic exam paid for by VAWA funds. Although the focus of VAWA funds is crimes against women, the funds can be used for men as long as the primary purpose of the program is to assist crimes against women.