Sexual Assault Forensic-Medical Exams Toolkit Compliance Guide

SAFE Exams for Victims *Without Reporting* to Law Enforcement

a product of the

Kentucky Sexual Assault Response Team Advisory Committee

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Toolkit for Kentucky's compliance with state and federal laws on Sexual Assault Forensic-Medical Examinations (SAFE exams).

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

The Sexual Assault Response Team Advisory Committee

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

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

SAFE Exam Toolkit Compliance Project

Special Thanks to the following individuals for their invaluable contributions on this project:

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Kentucky's Sexual Assault Response Team Advisory Committee (SART AC) is a multi-disciplinary collaboration responsible for developing policies to maximize response to sexual assault, pursuant to KRS 403.707. Led by the Kentucky Association of Sexual Assault Programs and the Kentucky State Police, the SART AC initiated legislation to ensure Kentucky's compliance with federal law regarding non-reported Sexual Assault Forensic-Medical Examinations (SAFE Exams). The 2010 Kentucky General Assembly enacted House Bill 500 to ensure Kentucky's compliance with federal law. HB 500 became effective on July 15, 2010. HB 500 was sponsored by Representative Kevin Sinnette and co-sponsored by Representatives Marie Rader, Ruth Ann Palumbo, Sal Santoro, Fitz Steel, John Tilley & Addia Wuchner.

The SAFE Exam Toolkit Compliance Project is designed to ensure and assist medical institutions throughout Kentucky with compliance of state and federal laws regarding sexual assault examinations. Though the term "hospital" is used throughout this guide, we believe the same information can be used by other sexual assault examination facilities. The information and sample forms offered in this ***SAFE Exam Toolkit Compliance Guide*** are intended to support hospitals in meeting their legal obligation to perform sexual assault forensic-medical examinations (KRS 216B.400), with specific information pertaining to examinations not reported to law enforcement officials.

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

This ***SAFE Exam Compliance Toolkit Guide***, developed primarily for hospitals and other facilities providing examinations, focuses on the development of protocols for response to cases not reported to law enforcement. Please note, new protocols are necessary for compliance with current federal and state law.

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

Changes in State & Federal Law

In Kentucky, SAFE Exams (also called rape exams) have historically only been available to victims if the crime was reported to law enforcement. However, federal law was enacted in 2005 to encourage more victims to get medical treatment and have samples collected for potential use in prosecution. Now, states must provide SAFE Exams without requiring the patient/victim to cooperate with law enforcement, which includes reporting required for payment of services or agreeing to press charges.

In order to comply with federal law, Kentucky eliminated the 'reporting for payment' requirement in 2009. The 2010 Kentucky General Assembly enacted House Bill 500, which became effective July 15, 2010, to govern performance of such exams throughout the Commonwealth. These changes serve two primary purposes: (1) to improve victims' access to necessary medical treatment and (2) to increase the availability of samples in delayed reporting cases. Thus, the ultimate goal of the new law is to increase reporting and effective prosecution of sex crimes.

Victim's Right to Choose Reporting or Non-Reporting

Kentucky hospitals and other sexual assault examination facilities are now required to provide SAFE Exams to victims who request such exams, regardless of law enforcement reporting. The victim/patient must be given a choice of whether or not to report to law enforcement. If the victim chooses to have a SAFE Exam but not report to law enforcement, samples must be stored for at least 90 days to allow the victims time to consider filing a delayed report.

KRS 216B.400 also requires that SAFE Exams be available to "persons seeking treatment as victims of sexual offenses." Thus, it is not necessary for health care or law enforcement officials to determine whether or not an offense has been committed prior to examination.

Hospital's Duty to Provide or Arrange for Secure Storage

According to the new law, hospitals have a legal duty to provide SAFE Exams and must allow the victim to choose whether or not to report to law enforcement. The hospital at which the exam is performed is required to provide secure storage or transfer the samples to a designated storage facility. Samples must be stored for at least 90 days in a manner that limits access. Potential storage locations include Risk Management Offices or other locations where security is enhanced. Options for designated storage facilities outside of the hospital setting include law enforcement agencies willing to provide storage without initiating investigations.

overview

HIPAA Compliance & Mandatory Reporting in Kentucky

Many people mistakenly believe that Kentucky law requires that all rapes be reported to law enforcement. This common belief is a misunderstanding of the law and can lead to violation of federal law, i.e. Health Insurance Portability and Accountability Act (HIPAA).

In Kentucky, the only mandatory reporting law that authorizes hospitals to release information to law enforcement is KRS 620.020, regarding child abuse and neglect. This Kentucky law requires that child abuse, neglect, or dependency be reported to law enforcement, Cabinet for Health and Family Services (CHFS), or local prosecutors. Thus, reporting child sexual abuse to law enforcement fulfills the duty to report under Kentucky law and is permitted by federal law.

Kentucky law also requires reporting of spouse abuse and abuse of adults with disabilities (who are unable to care for themselves and may need protective services). However, these laws require that reports should be made to the CHFS (commonly referred to as Social Services). A report to law enforcement **does not** fulfill one's duty to report to CHFS. Since KRS 209 and KRS 209A only authorize release of information to the CHFS, health care providers must obtain the patient's authorization to release information prior to reporting to law enforcement in order to comply with HIPAA. Since many hospitals and other health care providers developed reporting policies prior to the implementation of HIPAA, all relevant policies, procedures, and training should be updated to ensure compliance.

Assistance Available

The Kentucky Sexual Assault Response Team (SART) Advisory Committee is assisting in the development of appropriate policies and storage systems throughout the Commonwealth.

The ***SAFE Exam Compliance Guide*** was developed by the SART Advisory Committee, in conjunction with four pilot sites, to support communities in responding to these new legal mandates. This guide includes sample protocols, forms, and other tools for implementation. These tools are designed to ensure: (1) the patient's right to control reporting and release of information/ samples to law enforcement, (2) proper maintenance of the chain of custody so that evidence will be admissible in cases where a delayed report is made, and (3) appropriate destruction of samples, if the crime is not reported to law enforcement within the period required for storage. Additional technical assistance and training are available upon request.

contact

For more information or to request assistance contact the Kentucky Association of Sexual Assault Programs, Inc. at 502-226-2704 | http://www.kasap.org | attorney@kasap.org or Kentucky Hospital Association at 502-426-6220 | http://www.kyha.com

SAFE Exams

GENERAL INFORMATION.

A Sexual Assault Forensic-Medical Examination (SAFE Exam) is an examination performed on a victim of a sex crime where the medical needs are addressed and forensic samples are gathered. Kentucky laws, KRS 216B.400 and 502 KAR 12:010, govern Sexual Assault Forensic-Medical Examinations (SAFE Exams) for victims in Kentucky. ***Please note that these laws have recently been amended. Consequently, hospital policies and procedures should be revised for compliance.***

Hospitals are required to provide SAFE Exams, including to victims who do not want to report to law enforcement.

All hospitals that provide emergency services have a legal duty to provide SAFE Exams. Under recent changes in the law, the hospital must allow the victim to choose whether or not a report will be made to law enforcement.

KRS 216B.400 (as amended by the 2010 General Assembly) states that:

> (2) "Every hospital of this state which offers emergency services shall provide that a physician, a sexual assault nurse examiner … or another qualified medical professional…is available on call twenty-four (24) hours each day for the examinations of persons seeking treatment as victims of sexual offenses…"
>
> (10) "Each victim shall have the right to determine whether a report or other notification shall be made to law enforcement, except where reporting of abuse and neglect of a child, spouse, and other vulnerable adult is required, as set forth in KRS 209.030, 209A.030, and 620.030. No victim shall be denied an examination because the victim chooses not to file a police report, cooperate with law enforcement, or otherwise participate in the criminal justice system."

{ Based on pilot-site data, less than 10% of victims seeking services chose not to report to law enforcement. }

SAFE Exams are provided by Sexual Assault Forensic Nurse Examiners (SANEs) and Physicians at hospitals and specialized facilities throughout Kentucky.

SANEs are registered nurses with specialized credentials that authorize performance of SAFE Exams on sex crimes victims who are 14 years old or older. Because of their specialized training, SANE nurses offer a unique set of skills and services. For more information regarding SANE training in Kentucky, contact the Kentucky Association of Sexual Assault Programs. When a SANE nurse is not available, the examination must be performed by a physician or other health care professional whose scope of practice includes performance of pelvic exams.

Examinations for Children.

Regional Children's Advocacy Centers (CACs) specialize in performance of Child Sexual Abuse Exams based on referrals from Cabinet for Health and Family Services and/or law enforcement personnel. The best interest of the child should guide in all discussions of where and by whom a child should be examined. Factors to consider include whether the child needs emergency medical treatment and whether evidence would be compromised by delay. A list of CACs is available online at http://www.kacac.org/index.htm.

When an exam is performed, age-appropriate modifications may be made. Depending on the patient's developmental status, it may be appropriate to omit the speculum exam, pubic hair collection, or other procedures. Contact your Regional Children's Advocacy Center for additional information.

Hospitals should prepare by stocking Sexual Assault Examination Kits, available from the Kentucky State Police.

Kentucky State Police (KSP) provides Sexual Assault Examination Kits at no charge. Kits are generally used if the assault occurred less than 96 hours from the examination. Hospitals and other exam facilities can obtain kits in advance, to ensure availability when needed. Contact the forensic laboratory nearest your facility for kits. See Sample Forms SF-F for laboratory listings.

INFORMATION ABOUT REPORTING REQUIREMENTS AND OPTIONS.

In most cases the victim has a right to determine whether to report to law enforcement.

According to recently enacted Kentucky law,

> "Each victim shall have the right to determine whether a report or other notification shall be made to law enforcement...." KRS 216B.400(10) (as amended by the 2010 General Assembly)

This right is also protected by federal laws, including the Health Information Portability & Accountability Act (HIPAA) and the Violence Against Women Act of 2005.

HIPAA permits disclosures required by law, but mandates that the "disclosure complies with and is limited to the relevant requirements of such law." Thus, health care professionals must report only as required by law, as described below. In order to comply with HIPAA, hospitals and other health care providers must not disclose any information in any other cases, i.e. where reporting is not required by law.

To ensure compliance, protocols should require that the victim be asked whether or not s/he wants to report to law enforcement. To ensure informed consent, the victim should be fully informed (sample consent form included, SF-B). The victim's choice should be documented and "Authorization for Release of Information" forms completed, if appropriate.

Kentucky's mandatory reporting laws do NOT require that all sex crimes be reported to law enforcement.

There is no state or federal law that requires that all sex crimes be reported to law enforcement. In fact, automatic reporting to law enforcement violates multiple state and federal laws, which exposes hospitals and other health care providers to liability. The only exception is when the patient is a victim of child abuse or neglect.

Fortunately, hospital personnel may comply with any of the Kentucky's mandatory reporting laws by reporting to the Cabinet for Health and Family Services (CHFS). Please note that CHFS may contact law enforcement officials, regardless of the victims' decisions regarding reporting. Though hospital personnel cannot control whether CHFS will notify law enforcement, they should be aware of this possibility and inform victims in appropriate cases.

Reporting child abuse and neglect.

Kentucky law requires that child abuse and neglect be reported. Pursuant to KRS 620, reports can be made to CHFS, local or state law enforcement authorities, or a county or Commonwealth's Attorney. To comply with this mandate, any abuse involving a parent, guardian, or person in a position of control or supervision must be reported. HIPAA permits compliance.

Reporting spouse abuse.

Kentucky law requires that spouse abuse be reported to the CHFS. Pursuant to KRS 209A, reports can be made to the Statewide Hotline, or to local or regional CHFS authorities. No law requires that spouse abuse be reported to law enforcement. Therefore, if medical personnel report spouse abuse to law enforcement without the patient's authorization it is a HIPAA violation. A report made to law enforcement does not fulfill one's duty to report to CHFS.

Reporting abuse of adult with disabilities.

Kentucky law requires that abuse, neglect, or exploitation of certain vulnerable adults be reported to the CHFS. Pursuant to KRS 209A, reports can be made to the Statewide Hotline, or to local or regional CHFS authorities. Reporting to CHFS is required in cases involving abuse, neglect, or exploitation of an adult who "because of physical or mental disfunctioning, is unable to manage his or her own resources, carry out activities of daily living, or protect himself or herself …without assistance from other, and who may be in need of protective services." No law requires that abuse of a vulnerable adult must be reported to law enforcement. Therefore, if medical personnel report such abuse to law enforcement without the patient's authorization, it is a HIPAA violation, and does not fulfill one's duty to report to CHFS.

Cabinet for Health and Family Services Statewide Abuse Reporting Hotline: 1-800-752-6200

Rape Crisis Centers Regional Listing: www.kasap.org

Contacting the Rape Crisis Center.

Hospitals are required by law to contact the regional Rape Crisis Center before conducting a SAFE Exam, so that an advocate may be dispatched to support the victim during the exam. For more information, see 502 KAR 12:010(2). Because this contact is required by law it does not violate HIPAA.

[Note: See page 10 for a complete list of legal references.]

HANDLING AND STORAGE.

Chain of Custody.

Chain of Custody is a legal term that refers to documentation that guarantees the identity and integrity of samples from collection through final use, such as destruction or presentation in a court of law. It is a process used to maintain and document the chronological history of the sample. Chain of custody documents should include the name or initials of the person collecting the sample, each person or entity subsequently having custody of it, dates and times the items were collected and/or transferred, a brief description of the item, and a sample identification number.

Medical personnel are responsible for initiating the chain of custody of all samples, beginning at the time of collection. Each person or entity who takes physical possession of the samples becomes part of the chain of custody, and may be called to testify in court. Therefore, care should be taken to limit and document the number of individuals with access to the samples. A sample Chain of Custody Log for Tracking SAFE Exam Samples is included in the Sample Forms section of this document, SF-E.

Storage of Samples.

If the Victim Chooses to Report to Law Enforcement.

Samples should be transferred to the appropriate law enforcement officials as soon as possible. Chain of custody documentation must be maintained on samples and a copy must accompany samples at all times.

If the Victim Chooses NOT to Report to Law Enforcement.

Under the new law, the hospital or other examination facility at which the exam is performed has the duty to either store the samples or arrange for their storage.

Samples must be stored for at least 90 days in order to give the victim time to consider filing a delayed report. The hospital, in which samples were collected, must either provide for secure storage of the samples or transfer samples to a designated storage facility.

Suggestions for Establishing Secure Storage.

The primary issue for secure storage is establishing a site where access is as limited as possible. Options include locked cabinets in Risk Management Offices or other locations within the hospital setting where heightened security measures may already be in place. Chain of custody documentation must be maintained to track any time that a person accesses the samples for any reason or has the opportunity to access the samples. Sample forms for chain of custody documentation are included in the Sample Forms section as SF-D and SF-E.

Samples should be secured inside of a locked container that is sealed so that tampering would be evident. Because refrigeration is not required, no special equipment is required and a simple locking file cabinet may be used. However, special care must be taken to ensure that a limited number individuals can access the samples and all access is documented.

For example, in addition to a locking mechanism, policy could require that the cabinet be sealed with a single-use zip tie with numerical identifiers. Each person who breaks the seal should be required to document the purpose and circumstances related to the access.

Because many SAFE Exams are performed in emergency departments outside of regular business hours, secure storage may require multiple levels of protection. Thus, it may be necessary to establish a similar temporary storage location within the emergency department in order to secure samples until they can be transferred to the long-term storage area. The same materials described above could be used, except that only one or two individuals should be able to unlock the cabinet or locker to remove the sample for transfer or access the long-term storage area.

Designated Storage Facilities.

The hospital or other exam facility must ensure that samples are securely stored; one manner of doing so is transfer to a designated storage facility. A designated storage facility can be any facility or agency that has established secure storage practices and agreed to store samples for other facilities. A hospital, sexual assault examination facility, law enforcement agency, or other agency can be considered a designated storage facility. Due to hospitals' legal duties related to SAFE exams and HIPAA, hospitals should consider entering into a Business Associates Agreement and/or a Services Agreement with any designated storage facility.

Law Enforcement Agency as Designated Storage Facility.

In some communities, law enforcement agencies are agreeing to serve as designated storage facilities. The advantage to this model is that law enforcement agencies have well established practices that protect chain of custody. The challenge is to ensure that the victim's right to choose whether or not to report is honored, and that the victim's privacy is protected as fully as possible. A sample Standard Operating Procedure for Law Enforcement Serving as Designated Storage Facility is included in the Sample Forms section of this document, SF-C.

Transportation.

Samples may be transported by either personal delivery or use of a trackable delivery service (such as Federal Express or UPS). Any carrier used to transport evidence shall have the ability to track the package. A printed copy of the package tracking documentation should be maintained with the medical record.

Planning for Delayed Reports.

One of the primary rationale for ensuring that exams are available regardless of reporting to law enforcement is to increase the availability of evidence in cases where a delayed report is filed. Therefore, procedures must be developed to ensure that evidence may be efficiently retrieved in delayed reporting cases.

Patient discharge instructions should include the length of time that evidence will be held (at least 90 days) and how to file a delayed report. Policies should address how communications should be made, especially if samples will be transferred to a designated storage facility. Patient should be required to sign an "Authorization for Release of Information" form if a delayed report is filed.

Samples may be destroyed, using biohazard precautions, if a delayed report has not been filed within 90 days. For more information, see KRS 216B.400(10)(b)(4). Please note that 90 days is the minimum storage time. Samples may be stored for a longer period of time, as determined by local protocol.

PAYMENT FOR SAFE EXAMS.

The Sexual Assault Examination Program operated by the Crime Victims Compensation Board pays for services included in the SAFE Exam. In the past payment was only available if the exam was reported to law enforcement officials. To comply with federal and state law, policies have been changed to allow for payment in cases where a victim chooses not to report. Revised payment forms and processes may be found at http://cvcb.ky.gov/. For payment rates, see 107 KAR 2:010.

Kentucky law states that "no charge shall be made to the victim for these examinations." See KRS 216B.400. Because of this provision, the hospital must not charge the patient for any service that is included in the SAFE Exam, such as medical screening and treatment for sexually transmitted infections. Nonetheless, patients should be informed that they may be billed for services that are not routinely included in every exam. For example, treatment for a broken bone would not be included. Patients should be informed that they may apply independently to the Crime Victims Compensation Board for assistance with additional crime-related expenses. Please note, however, that not all victims are eligible for Crime Victims Compensation Fund reimbursement. For more information, contact the Crime Victims Compensation Board at 800-469-2120, or visit their website at http://cvcb.ky.gov/

ENSURING COMPLIANCE.

Hospitals should immediately review Sexual Assault Examination Protocols for compliance with state and federal laws, including HIPAA. Important issues for review include whether mandatory reporting is appropriately addressed and providing an opportunity for victims to choose whether or not to report to law enforcement. Next, determine where samples will be stored in cases not reported to law enforcement. Then, consider what will be needed to develop a storage system, such as equipment, protocols, and/or business associates agreements. Performance of SAFE Exams in Kentucky is governed by KRS 216B.400 and 502 KAR 12:010. (Please note: modification of 502 KAR 12:010 will occur as a result of amendment to KRS 216B.400 by the 2010 Kentucky General Assembly.)

The SART Advisory Committee, described on page 3, is available to provide ongoing technical assistance regarding SAFE Exam Compliance and SART Development. For more information or to request assistance, contact SART Advisory Committee representatives at 502-226-2704.

If you are unsure whether there is SART in your area who may be working to ensure compliance, contact the Rape Crisis Program in your area. For more information about regional rape crisis centers, visit www.kasap.org.

LEGAL REFERENCES.

For your convenience, relevant Kentucky laws are listed below.
To review any statute (KRS), visit: www.lrc.ky.gov/krs/titles.htm
To review any regulation (KAR), visit: www.lrc.ky.gov/kar/titles.htm

SAFE Examination Requirements

- General Requirements - KRS 216B.400
- Sexual assault forensic-medical protocol - 502 KAR 12:010

SAFE Examination Payment

- Payment schedule for SAFE exams - 107 KAR 2:010
- Crime Victims Compensation Fund - KRS 346 and 107 KAR1:005-040

Reporting Requirements

- Definition of 'abused or neglected child' - KRS 600.020
- Duty to report child abuse, neglect, or dependancy - KRS 620.030
- Definitions for spouse abuse reporting - KRS 209A.020
- Duty to report spouse abuse - KRS 209A.030
- Definitions for reporting of abuse of adult with disabilities - KRS 209.020
- Duty to report abuse of adult with disabilities - KRS 209.030

SAMPLE FORMS

developed by
SAFE Exam Toolkit
Compliance Project Work Group

- **SF-A:** Sample Hospital Policy and Procedure for SAFE Exams
- **SF-B:** Sample Consent Form for SAFE Exam and Storage of Samples
- **SF-C:** Sample Standard Operating Procedure for Law Enforcement Serving as Designated Storage Facility
- **SF-D:** Sample Master Property Log for SAFE Exam Samples
- **SF-E:** Sample Chain of Custody Log for Tracking SAFE Exam Samples
- **SF-F:** Toolkit Supply List: Recommended Supplies for SAFE Exams

SF-A: Sample Hospital Policy and Procedure for SAFE Exams

PURPOSE: To establish responsibilities for hospital personnel regarding performance of Sexual Assault Forensic-Medical Examinations, and guidelines for the proper documentation, collection, packaging, and submission of samples, regardless of whether or not the crime will be reported to law enforcement.

POLICY: The hospital will provide a Sexual Assault Forensic-Medical Examination (SAFE Exam) to any victim who requests such treatment, regardless of whether the crime is reported to law enforcement. Hospital personnel will not release information to law enforcement unless the victim has authorized the release of information and/or samples. In cases involving suspected abuse, neglect, and/or exploitation of a child, spouse, or adult with a disability who may be in need of protective services, hospital personnel will comply with mandatory reporting laws by making reports to the Cabinet for Health and Family Services. Hospital personnel will contact the Regional Rape Crisis Center to request that an advocate be dispatched, but will release only minimum necessary information. All samples will be collected, identified and packaged with extreme caution to prevent contamination, deterioration, and/or tampering. Chain of custody documentation will be maintained regarding all samples. If the patient has authorized the release of samples to law enforcement officials, samples will be transferred as soon as possible. If the patient has not authorized the release of samples to law enforcement, samples will be securely stored for at least 90 days, then may be destroyed in accordance with the hospital's policy for destruction of biohazard materials.

PROCEDURE:

I. NOTIFICATION & REPORTING

A. Mandatory Notification to Regional Rape Crisis Center

1. Hospital personnel will notify the Regional Rape Crisis Center that a victim has requested a SAFE Exam and request that an advocate be dispatched.
2. Hospital personnel will provide the minimum necessary information, including whether the victim is an adult or a child, when the victim arrived, and the size clothing needed (if any).

B. Limited Mandatory Reporting to Cabinet for Health and Family Services

1. No law requires that all sexual assaults must be reported to law enforcement. HIPAA only permits reporting abuse, neglect, and exploitation as required by law.
2. If the patient is less than 18 years old,
   a. Hospital personnel will assess whether the patient may be an abused, neglected, or dependent child, as defined in KRS 620.020. If child abuse, neglect, or dependency is suspected, hospital personnel shall immediately make a report to the Cabinet for Health and Family Services (CHFS, also commonly referred to as Social Services) and/or a local or state law enforcement agency;
   b. If a report has been made, hospital personnel will consult with CHFS and/or law enforcement authorities regarding whether referral to a regional children's advocacy center or other specialized treatment facility is in the best interest of the child. Factors for consideration include, but are not limited to: emergent medical needs, availability of services, age of the patient, and/or likelihood that evidence will deteriorate if an examination is not performed immediately.
3. If the patient is 18 years old or older,
   a. Hospital personnel will not contact law enforcement or release any information to law enforcement without the patient's authorization;
   b. Hospital personnel will assess whether the patient may be a victim of "abuse or neglect inflicted by a spouse" as defined KRS 209A.020;
   c. Hospital personnel will assess whether the patient may be a person who "because of mental or physical dysfunctioning, is unable to manage his or her own resources, carry out the activity of daily living, or protect himself or herself from neglect, exploitation, or a hazardous or abusive situation without assistance from others, and who may be in need of protective services;"
   d. If subsection (3)(b) or (3)(c) applies, hospital personnel shall immediately make a report to CHFS and notify the victim that a report has been made.
4. If neither subsection (2) nor (3) applies, no law requires or permits reporting without the authorization of the patient. Hospital personnel will not release any information, unless the patient's authorization to release information is obtained.

C. Optional Reporting to Law Enforcement
   1. Because the patient has the right to determine whether or not to report to law enforcement or otherwise cooperate with the criminal justice system, hospital personnel will ask the victim whether or not s/he wants to report to law enforcement;
   2. If the victim chooses to report to law enforcement, hospital personnel will obtain the patient's Consent for Treatment and Authorization to Release Information, and contact law enforcement authorities;
   3. If the victim chooses not to report to law enforcement, hospital personnel will obtain the patient's Consent for Treatment. Hospital personnel will not release information to law enforcement unless the victim has authorized the release of information and/or samples.

II. GENERAL GUIDELINES FOR SEXUAL ASSAULT FORENSIC-MEDICAL EXAMINATION
   A. All SAFE Exams shall be provided in accordance with KRS 216B.400 and 502 KAR 12:010.
   B. Hospital personnel will at all times prioritize the health and well-being of the patient and preserve the patient's right to privacy as required by HIPAA.
   C. If the patient was assaulted within 96 hours of the examination, a Kentucky State Police Sexual Assault Evidence Collection Kit will be used.
      1. Hospital personnel will refer to Instructions provided within the Kit;
      2. Hospital personnel may modify the examination, based on the history provided by the patient, age of the patient, and/or developmental stage of the patient.
   D. Pursuant to KRS 216B.400(7), "a minor may consent to examination …. 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." Hospital personnel will not perform a SAFE Exam on a minor without the consent of the minor.
   E. If the patient is 14 years old or older, the examination may be performed by a Sexual Assault Nurse Examiner (or SANE). SANEs are not authorized to perform speculum examinations on patients less than 14 years old.
   F. If the patient is less than 18 years old, medical personnel may consult with law enforcement and/or CHFS personnel regarding referral to a Children's Advocacy Center, as discussed in Section I.B. of this policy.

III. COLLECTION & DOCUMENTATION OF SAMPLES
   A. Hospital personnel will collect samples only with the consent of patient or in response to a court-ordered search warrant.
   B. Hospital personnel will exercise extreme caution with all procedures, including collection, packaging, storage, and transfer.
      1. Hospital personnel will ensure that all samples are dry prior to packaging;
      2. Samples will not be packaged or stored in plastic;
      3. Hospital personnel will individually package and seal each sample so as to avoid any possibility of cross contamination and/or tampering. A sample is properly sealed when the contents cannot readily escape and if entering the container will result in obvious damage or alteration to the container or seal;
      4. Tape may be used to seal the opening of containers in which samples/items will be deposited. Initials or similar identification of the person placing the seal shall be marked across the tape so that the writing falls on both the tape and the container;
      5. Each sample will be marked with the name of examiner, date and time of collection, and patient identifier.
   C. Hospital personnel will initiate and maintain Chain of Custody documentation on all samples collected during a SAFE Exam.
      1. Chain of custody documentation should provide a detailed chronological history of sample in order to guarantee the identity and integrity of the samples from collection through final use;
      2. The examiner who collects the samples will initiate Chain of Custody Documentation by completing all documentation included in the Kit and any additional documentation required by the hospital. Documentation will include the date and time of collection, patient identifier, and the name and signature of the examiner who collected it;
      3. Each person or entity who takes physical possession of the samples becomes part of the

Chain of Custody, and may be called to testify in court. Therefore, hospital personnel will limit the number of individuals who have possession of the samples to the minimum number possible;

4. Hospital personnel will document each person who has custody of the samples collected using the Chain of Custody form.

IV. STORAGE OF SAMPLES

A. Temporary Storage

1. Hospital personnel will ensure that samples are securely stored;
2. The examiner who collected the samples will maintain possession of the samples throughout the examination and until possession is transferred and documented using the Chain of Custody Form;
3. If the patient has chosen to report to law enforcement officials, hospital personnel will transfer the samples to law enforcement officials as soon as possible;
   a. If a law enforcement official is present upon completion of the examination, hospital personnel will document the transfer of custody on the Chain of Custody form and obtain the signature of the law enforcement officer on the form. Hospital personnel will retain the original form with the hospital's record of the exam, and provide a copy of the form to the law enforcement official to be maintained with the samples.
   b. If there is no law enforcement official present upon completion of the examination or if the victim has not authorized release of samples to law enforcement officials, hospital personnel will place the samples and Chain of Custody form in the "temporary storage location" in the [locker or cabinet at site which will be accessible to all examiners, but to which others will have limited access]. Hospital personnel will secure the [locker or cabinet or similar unit] with the lock provided. Once the lock is in place, the examiner will no longer have access to the samples placed in the locker. The examiner will notify the [Custodian of Samples] {Note: this may be SANE Coordinator, Risk Management Personnel, Emergency Department Manager, or other hospital personnel responsible for ensuring secure storage of samples.}

B. Extended Storage

1. Samples will be removed from the temporary storage location as soon as possible;
2. Only the [Custodian of Samples] or the [Alternative Custodian of Samples] can access the temporary storage location for the purpose of removing or transferring samples;
3. The [Custodian of Samples] will transfer samples from the temporary storage location and document the transfer on the Chain of Custody form;
   a. If the patient has authorized release of samples to law enforcement, the [Custodian of Samples] will document the transfer of custody on the Chain of Custody form and obtain the signature of the law enforcement officer on the form. The [Custodian of Samples] will retain the original form with the hospital's record of the exam, and provide a copy of the form to the law enforcement official to be maintained with the samples.
   b. If the patient has not authorized release of samples to law enforcement, the hospital will ensure that samples are stored securely for at least 90 days [or longer, based on local protocol].

...IF HOSPITAL PROVIDES SECURE STORAGE INTERNALLY

i. The [Custodian of Samples] will transfer samples to the "extended storage facility" located in the [Risk Management Office, SANE Coordinator's Office, or other location to which very few people have access].

ii. The [Custodian of Samples] will place the samples and Chain of Custody form in the in the [locker or cabinet or similar unit] and secure with a lock.

iii. The [Custodian of Samples] will also document transfer of samples to the extended storage location on the Master Property Log, including the following information:

a) Patient encounter number
b) Patient name
c) Date the samples/items were collected
d) Description of samples/items collected
e) Name of the examiner
f) Date and time samples/items were submitted to the extended storage location

…OR …IF HOSPITAL TRANSFERS TO A DESIGNATED STORAGE FACILITY

i. The [Custodian of Samples] will arrange for transfer of samples to the "designated storage facility" by personal delivery or use of a trackable delivery service.
ii. The [Custodian of Samples] will document transfer on the Chain of Custody form and Master Property Log form. The original Chain of Custody form will be maintained with the hospital's record related to the examination.
iii. The [Custodian of Samples] will place the samples and a copy of the Chain of Custody Form in a mailing container and seal so that tampering would be evident. The [Custodian of Samples] will mark the package with the (1) Name of the Facility at which the examination was conducted, (2) the date of the examination, and (3) any other information necessary for the tracking purposes at the designated storage facility. This information shall be used by the Designated Storage Facility for the purposes of tracking and/or retrieving the samples.
iv. If samples are to be transferred by delivery service, the [Custodian of Samples] will place the sealed container in an appropriate package for shipping. Any carrier used to transport evidence shall have the ability to track the package. The [Custodian of Samples] will obtain a copy of the package tracking document that confirms delivery of the samples to the Designated Storage Facility.

V. Removal of Samples from Storage

A. Delayed Reporting

1. If the patient chooses not to report to law enforcement at the time of the exam, hospital personnel will provide the victim with information regarding whom to contact if s/he decides to file a delayed report;
2. Prior to the release of samples to a law enforcement agency, hospital personnel will obtain the patient's written authorization for release of samples;

...IF HOSPITAL PROVIDES SECURE STORAGE INTERNALLY

3. The [Custodian of Samples] will arrange for transfer of samples the law enforcement agency of jurisdiction by personal delivery or use of a trackable delivery service.
4. The [Custodian of Samples] will document transfer on the Chain of Custody form and Master Property Log from. The original Chain of Custody form will be maintained with the hospital's record related to the examination.

...OR...IF HOSPITAL HAS TRANSFERRED TO A DESIGNATE STORAGE FACILITY

3. Hospital personnel will notify the Designated Storage Facility that the victim has authorized release of samples. Notification should include a copy of the Authorization for Release of Information Form and information regarding the law enforcement agency to which samples should be transferred.
4. The Designated Storage Facility will arrange for transfer of samples by personal delivery or use of a trackable delivery service with precautions taken to ensure that complete Chain of Custody documentation is maintained at all times.

B. Destruction

1. Samples shall be stored for at least 90 days [or longer period of time if established by local protocol]. After 90 days they may be destroyed in accordance with the Hospital's policy for destruction of biohazardous materials [or if storage provided by a Designated Storage Facility, in accordance with the terms of Service Agreement and/or Business Associates Agreement];
2. The Custodian of Records or Designated Storage Facility personnel shall maintain a log of all samples which have been destroyed.

Reference: Kentucky State Police, Evidence Collection Handbook.

SF-B: Sample Consent Form for SAFE Exam and Storage of Samples

I, _____(Patient Name) hereby authorize [name healthcare organization] and the Sexual Assault Nurse Examiner (SANE), physician, or other qualified medical professional to perform a Sexual Assault Forensic-Medical Examination (SAFE Exam). I understand the examination includes, but is not limited to a history, complete head to toe assessment, documentation of injury, genital inspection, an internal speculum examination, and the collection of medical and/or forensic samples. I understand that I may refuse any portion of the exam or stop the exam at any time.

Consent for Collection of Samples and Taking of Photographs

I authorize the following: *(Please initial beside each procedure to which you consent)*

_____ Drawing of blood and collection of other necessary specimens for testing. I understand I may experience pain and/or bleeding, ongoing pain and swelling, and the possibility of nerve injury from the puncture site.

_____ Taking of photographs to document injuries (including genitalia) if the examiner deems necessary.

Impact of Non-reporting or Delayed Reporting

_____ I do not wish to report this incident to law enforcement at this time.

You should understand that:

- Not reporting the assault to law enforcement or making a delayed report greatly reduces the chances that the person(s) who assaulted you can be arrested and/or prosecuted.
- Other evidence that might normally be collected by law enforcement (such as items at the scene of the crime) may be permanently lost, and it may not be possible for law enforcement officials to interview the suspect(s), and/or potential witnesses.
- Hospital personnel are required by law to report certain forms of abuse to the Cabinet for Health and Family Services (CHFS, also called Social Services). CHFS must be notified in cases of abuse where the victim is a child, the spouse of the abuser or an adult with disabilities who cannot protect herself or himself. Hospital personnel cannot control whether or not CHFS employees will contact law enforcement officials.

This information is not and should not be considered as legal advice.

Regarding collection of samples as a part of the SAFE Exam, I understand: *(Please initial each line)*

_____ The samples collected will be held in a secure storage for at least 90 days.

_____ If I decide to file a delayed police report within those 90 days I should contact _____ [*name law enforcement agency where the incident happened*], and inform the police I had a SAFE exam performed at [*name healthcare organization*] on _____ [*specify date*]. I understand that I will need to provide the hospital with written consent for release of samples.

_____ Samples may be destroyed after 90 days if I do not file a police report and make notification to [*name healthcare organization*].

_____ Even if I do not file a report to law enforcement the documentation and photos of the SAFE Exam becomes part of my permanent medical record. These records may be released without my consent in response to a valid court order.

I assert that I choose not to report to law enforcement or to release information/samples to law enforcement for active investigation at this time. I understand that [name healthcare organization] is not required to report to law enforcement based on this examination. I also understand that [name healthcare organization] will follow state mandatory reporting laws. I agree to hold harmless [name healthcare organization], its employees, agents, physicians and SANE(s) from any consequences of not timely reporting any alleged assault to law enforcement.

I certify that I have read the above or it has been fully explained to me. I understand the contents of this document. I further certify that I have received a copy of this document.

SIGNED_____ DATE _____

WITNESS _____ DATE _____

SF-C: SAMPLE STANDARD OPERATING PROCEDURE for LAW ENFORCEMENT serving as Designated Storage Facility

Storage of Samples from Sexual Assault Forensic-Medical Exams (SAFE Exams) Not Reported to Law Enforcement

I. PURPOSE

The purpose of this order is to establish the policy governing the procedure for the storage of samples from Sexual Assault Forensic-Medical Exams (SAFE Exams) where the victim has chosen not to report to law enforcement at the time of the examination, but where the samples have been transferred to law enforcement for storage in order to protect the chain of custody in case the victim chooses to file a delayed report.

II. POLICY

State and federal laws require that SAFE Exams be provided to victims of sex crimes without requiring the victim to report to law enforcement or otherwise cooperate with criminal justice authorities. This law enforcement agency has agreed to provide storage for samples collected in non-reported examinations to ensure that the chain of custody is protected so that samples will be available for use in criminal justice proceedings in cases where delayed reports are filed.

III. PROCEDURE

A. Medical personnel will be responsible for collecting biological samples such as hair, saliva, blood, semen, other body fluids, trace samples, as well as clothing, photos or other samples from the sexual assault victim that have the potential to be of forensic value. All samples that are collected will be properly packaged. Chain of custody procedures will be initiated immediately by medical personnel.

B. Medical personnel will inform the victim of her/his right to choose whether or not to report to law enforcement officials, and will make appropriate notifications in response to the victim's choice.

C. If the victim chooses not to report to law enforcement at the time of the examination, medical personnel will provide written instructions and contact information regarding how to file a delayed report and how to request that samples be released for investigative purposes. The victim will be informed, both verbally and in writing, that samples will be transferred to the law enforcement agency for storage and that they may be destroyed after 90 days (or longer, if established by local protocol) if no report has been filed.

D. After the SAFE Exam has been completed, medical personnel will notify the law enforcement agency that a non-reported exam has been completed and arrange for transfer of samples for storage.

E. The law enforcement agency will advise medical personnel whether law enforcement personnel will pick up the samples, or whether samples should be transferred through a trackable courier service.

F. Upon receipt of samples from a non-reported examination, the law enforcement officer will log the samples into the law enforcement agency's property room (rather than evidence room). Law enforcement officials may open any exterior packaging used for transfer, such as a box in which samples were placed for mailing. However, law enforcement officials will not break any seal put in place to protect chain of custody.

G. The law enforcement officer will draw a Preliminary Report Number and use the UOR of 99999. The Preliminary Report Number will be used as the "Victim's Last Name" and "Unknown" as the "Victim's First Name." The date of birth of the victim will be listed as the date that the SAFE Exam was performed. The race of the victim will be listed as "Unknown". The location for the report will be "Community at Large."

H. Samples will remain in storage in the property room until either:

1. 90 days (or other time period established by local protocol) has passed and the samples are removed for destruction;
2. The victim files a delayed report and requests that the samples be released for processing; or
3. In response to a valid Court Order directing that the samples be removed.

I. In the event that samples are destroyed, biohazard precautions will be observed.

J. If the victim files a delayed report with the law enforcement agency, the law enforcement agency will contact [Hospital's Custodian of Samples] for assistance with authorization for release of relevant medical records and samples.

SF-D: Sample Master Property Log for SAFE Exam Samples

Patient Account #	Patient Name	Exam Date	Signature of Person Submitting for Storage	Person Receiving SAFE Exam Samples

Description of Sample(s)	Logged In (Date & Time)	Logged Out (Date & Time)	Action Taken	Comments

SF-E: Sample Chain of Custody Log for Tracking SAFE Exam Samples

CHAIN OF CUSTODY FORM
SEXUAL ASSAULT FORENSIC-MEDICAL EXAM

Samples related to sexual assault examination shall remain in the custody of the last person named until released to the next person or placed inside a secure locked cabinet/temporary secure locker. The medical personnel performing the examination must complete Part A of this Chain of Custody form. Part B will be completed by the next person taking custody of the samples. THIS FORM IS TO REMAIN WITH THE KIT AS LONG AS IT IS IN THE POSSESSION OF THE [HOSPITAL]! If the Kit is transferred to another facility, the original should be maintained with the [Hospital's] record and a copy of the form should be attached to the Kit at the time of transfer.

PART A

Patient Name / Identifier	Date/Time of Examination	Kit locked in: ◊Locker ◊Cabinet Date/Time

Specimen/Potential Evidence Type	Examiner Name
Law Enforcement Agency, Specify (if victim chose to report)	Investigating Officer Name (if victim chose to report)

PART B

Taken From:	By:	Taken To/Given To:	Date/Time:
Location:	Name:	Location/Person:	Date/Time:
Location:	Name:	Location/Person:	Date/Time:
Location:	Name:	Location/Person:	Date/Time:
Location:	Name:	Location/Person:	Date/Time:

_____ _____ _____
Kit Transferred from [Hospital] By Signature Date/Time

_____ _____ _____
Kit Transferred from [Hospital] To Signature Date/Time

Upon Transfer from [Hospital]: Original- [Hospital] Record Copy- Attached to Kit

SF-F: Toolkit Supply List: Recommended Supplies for the SAFE Exam

The SAFE Exam Toolkit, a toolbox designed to be pre-stocked with all supplies necessary to conduct a SAFE Exam, is made available to hospitals providing emergent care. The Toolkit and Toolkit Compliance Guide were supported by Grant Number VAWA ARRA-2009-KASAP-00046, awarded through the Kentucky Justice and Public Safety Cabinet by the Office on Violence Against Women, U.S. Department of Justice.

With the exception of the SAECK, ongoing stocking of necessary supplies must be provided by hospitals.

- ❑ SAECK (kit)
- ❑ Butterfly needles (2)
- ❑ 3 cc syringe
- ❑ 18 g needle
- ❑ Tourniquet
- ❑ Purple top tube
- ❑ Several 2 x 2s
- ❑ Role of tape
- ❑ Sterile water or saline (to moisten swabs and control with) - Pre-filled saline flush or vial of saline, 10 cc syringe, and 18 g needle
- ❑ Speculum
- ❑ KY jelly
- ❑ 16 additional swabs (hospital stock - if there are two in a package then you only need 8 packages)
- ❑ Blank envelopes (4)
- ❑ Urine specimen cup
- ❑ Black ink pen or sharpie to label envelopes
- ❑ Chux pad (1)
- ❑ Paper bags (4) - medium
- ❑ Flashlight
- ❑ Consent Forms (reporting *and* non-reporting) (must be issued by hospital)

Restocking Sexual Assault Evidence Collection (SAECK) Kits to Ensure Availability

The Kentucky State Police Crime Laboratory provides Sexual Assault Evidence Collection Kits (SAECK) for examinations of victims at no cost to examination facilities or law enforcement agencies. ***[NOTE: KSP Crime Laboratory does not provide the entire toolkit caddy and supplies; only the SAECK within the toolkit.]*** In the past, kits were typically brought to hospitals by law enforcement officials as needed, usually when responding to reports. Fortunately, kits may be stocked in advance, therefore, it is not necessary to wait until a victim is present.

Any hospital or other sexual assault examination facility may request kits from the Kentucky State Police Crime Laboratory. Kits are provided at no cost to the facility. However, the facility is responsible for paying for delivery or arranging pick up.

Kits may be requested from either the Central Laboratory or the nearest Branch Laboratory. Locations include:

CENTRAL LABORATORY BRANCH: 100 Sower Blvd. STE 102, Frankfort, KY 40601, Telephone: (502)564-5230

EASTERN LABORATORY BRANCH: 1550 Wollohan Dr., STE #2, Ashland, KY 41101, Telephone: (606)929-9142

JEFFERSON LABORATORY BRANCH: 3600 Chamberlain Lane, STE 410, Louisville, KY 40241, Telephone: (502)426-8240

NORTHERN LABORATORY BRANCH: 5690 East Alexandria Pike, Cold Springs, KY 41076-9734, Telephone: (859)441-2220

SOUTHEASTERN LABORATORY BRANCH: 1001 W. 5th Street, London, KY 40741, Telephone: (606)877-1464

WESTERN LABORATORY BRANCH: 1081 Thornberry Dr., Martin Plaza Mall, Madisonville, KY 42431, Telephone: (270)824-7540

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