Emergency Department responsibilities for the examination and care of victims of sexual offenses in accordance with KRS 216B.400

A Summary

* Every hospital of this state which offers emergency services **shall provide** that a physician, sexual assault nurse examiner or another qualified medical professional is available on call 24 hours each day for the examinations of persons seeking treatment as victims of sexual offenses.
* With the consent of the victim or upon the request of the victim the appropriate medical professional will
  + Examine the victim for the purpose of providing basic medical care
  + Gather samples that may be used as evidence
  + Provide lab tests as appropriate
* Each victim shall be informed of:
  + Available services for treatment of STIs, Pregnancy and any other medical or psychological problem.
  + Available crisis intervention or other mental health services provided by the regional rape crisis center.
* A minor may consent to the exam without the consent of the parent/guardian
* No charge shall be made to the victim by the hospital, physician, pharmacy, Health Department, SANE, other qualified medical professional or the victim’s insurance carrier.
* Each victim shall have the right to determine whether or not a report will be made to law enforcement, except where Kentucky’s mandatory reporting laws apply.
* The victim will not be denied a Sexual Assault Forensic-medical Exam (SAFE) if they choose not to make a report to law enforcement.
* The facility providing the exam will make arrangements for the storage of non-reported samples for a minimum of one year. The facility may destroy non-reported samples after one year.
* If a victim chooses to report to law enforcement, the facility must notify the law enforcement agency within 24 hours.

This law is up to date as of 4/8/2016

A summary of 502 KAR 12:010 – Sexual Assault Forensic-Medical Exam (SAFE) protocol

* Prior to conducting a forensic exam, the facility shall contact the regional rape crisis center and inform the advocate on call that a victim has arrived.
* When the advocate arrives, the victim will be given the option of having the advocate present for the exam.
* If the victims is under the age of 18, assess whether mandatory reporting of abuse and neglect applies
  + If a report is made, consult with the Cabinet for Health and Family Services or law enforcement to determine if a referral to a regional child advocacy center should be made.
* If the victim is over the age of 18, do not contact law enforcement without the victim’s consent.
  + Ask the victim whether she or he wants to report the incident to law enforcement;
* If the victim chooses to report the incident to law enforcement, obtain the victim's consent for treatment and authorization for release of information, and contact law enforcement; and
* If the victim chooses not to report to law enforcement, information or samples shall not be released to law enforcement, unless the victim has specifically authorized the release of information or samples;
* Inform the victim that all statements made during the interview and the sample collection process to physicians, nurses, other hospital personnel, or law enforcement officers are not privileged and may be disclosed;
* Provide a detailed explanation of the forensic-medical examination, the reasons for conducting the forensic-medical examination and the effect on a criminal prosecution if a forensic examination is not performed or reported to law enforcement;
  + Advise the victim that photographs and other documentation, if released to law enforcement, may be used as evidence and that the photographs may include the genitalia;
  + Advise the victim that the forensic-medical examination, including basic treatment, shall be conducted free of charge, but costs related to additional medical treatment may be incurred;
* Inform the victim that consent for the forensic sample collection process may be withdrawn at any time during the examination;
* Inform the victim of the need for a physical examination due to the risk of sexually transmitted infections, including HIV, pregnancy, injury, or other medical problems whether or not the victim chooses to have the evidence collected;
* Obtain documented consent from the victim prior to conducting the forensic-medical examination; and
* The Forensic-Medical Examination.
  + A physical examination may be conducted for basic treatment and to collect samples in all cases of sexual assault, regardless of the length of time that may have elapsed between the time of the assault and the examination itself.
  + If the sexual assault occurred within ninety-six (96) hours prior to the forensic-medical examination, a Kentucky State Police Sexual Assault Evidence Collection Kit shall be used.
* Personnel in attendance during the forensic examination shall be limited to the following persons:
  + Examining physician, sexual assault nurse examiner, as defined in KRS 314.011(14), or qualified medical professional;
  + Attending nurse and additional nursing personnel;
  + Rape crisis center advocate; and
  + Other persons who are:
    - Dictated by the health needs of the victim; or
    - Requested by the victim.
* Photographs, including photographs of the genitalia, may be taken if the appropriate equipment is available at the examination facility, precautions are taken to ensure confidential storage, and the victim has consented to having photographs taken.
* The collection of samples shall cease immediately if the victim dies during the process.
* The coroner shall be contacted if the victim dies during the sexual assault medical-forensic examination and the samples process and the evidence collected up to that time shall be delivered to the coroner or the coroner's designee, Collection of samples may be completed by medical personnel if requested by the coroner.
* The coroner shall be notified in accordance with KRS 72.020 and samples shall not be collected if the victim is deceased upon arrival at the examination facility.

* Post forensic Examination Procedures. At the conclusion of the forensic-medical examination the appropriate personnel at the examination facility shall provide the victim with:
  + Information regarding follow-up procedures and appointments concerning:
    - Sexually transmitted infections, including HIV;
    - Pregnancy;
    - Urinary tract or other infections; and
    - Similar assault related health conditions;
* Information regarding the availability of follow-up counseling and support services available from a rape crisis center or other mental health agency;
* Information from the law enforcement officer regarding who to contact about the prosecution of the offense in cases reported to law enforcement;
* Ensure the victim is given appropriate clothing to where upon departure of the facility if needed.
* Ensure that the victim has signed the Crime Victims Compensation Board consent to release their information.
* Chain of custody documentation shall be maintained throughout all storage and transfer procedures.
  + All samples shall be stored under circumstances that restrict access to reduce the likelihood of tampering and protect the chain of custody. The number of individuals with access to the storage area shall be limited to the minimum number possible.
  + The following information shall be maintained for each sample stored:
    - Patient identifier;
    - Date collected;
    - Description of sample;
    - Signature of the collecting medical professional;
    - Date and time entered into storage and signature of person receiving; and
    - Date and time removed from storage, signature of person removing, and purpose of removal.
* If the victim chooses to report the incident to law enforcement as a crime or has authorized the release of samples to local law enforcement for secure storage, the examination facility shall transfer samples to local law enforcement officials as soon as possible.
* If the victim chooses not to report the incident to law enforcement as a crime when the examination is performed, the examination facility shall arrange for the samples to be stored securely for at least one year.