



WEST VIRGINIA

Specific requirement to report sexual assault? No.

Requirement to report non-accidental or intentional injuries? No.

Requirement to report injuries caused by criminal conduct? No.

Additional statutes that may impact competent adult victims of sexual assault? No.

STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

W. Va. C.S.R. § 168-1-1. General.

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.

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. Where an alleged victim of an alleged violation of W. Va. Code §61-8b ET SEQ. chooses to participate in an investigation of said alleged violation and if an investigating officer is not present at the time the alleged victim arrives at the hospital, a law enforcement officer should be contacted immediately through appropriate emergency channels.

3.1.3. Prior to conducting a forensic medical examination, the examining physician or SANE will explain to the alleged victim what a sexual assault examination involves and determine whether the victim wishes to participate in an investigation regarding the alleged sex crimes violation and document said decision in writing. The obtaining of additional 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. Where an alleged victim of an alleged violation of W. Va. Code §61-8b ET SEQ. chooses to participate in an investigation of said alleged violation, 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. Where an alleged victim of an alleged violation of W. Va. Code §61-8b ET SEQ. chooses not to participate in an investigation of said alleged violation hospital personnel will be responsible for preparing the forensic evidence to be transported in such a manner and to such a location as is designated in the instructions accompanying the WV State Police Sexual Assault Kits.

3.1.7. Following the completion of a forensic medical examination, the hospital shall submit a certification that such an examination was performed and may submit, within a reasonable time of the date of examination, an original invoice for the forensic medical examination to the West Virginia Prosecuting Attorneys Institute at its regular business address, Attention: Forensic Medical Examination Fund. The invoice shall contain the name of the alleged victim and the date of the alleged offense.

3.1.8. 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 alleged victim, or the alleged victim's insurance company, of an alleged violation for costs of a forensic medical examination

W. Va. C.S.R. § 168-1-4. Responsibilities of Law Enforcement Agencies.

4.1. When contacted an investigating officer or law enforcement agency is responsible for the following duties:

For more information, please contact the Sexual Assault Prevention and Response Office at 703-696-9422



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. The investigating officer may not require an alleged victim's agreement to pursue prosecution of the case as a condition precedent to 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 to alert said prosecuting attorney or assistant prosecuting attorney of the investigation.

4.1.3 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. § 168-1-6. Limitations on Use of Fund.

6.1. 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 ninety-six (96) hours after the time of the alleged assault. If, however, in the judgment of the physician, sexual assault nurse examiner (SANE), physician assistant working under the direct supervision of a physician or the advanced practice nurse, special circumstances exist and the forensic examination should be conducted even after the passage of ninety-six such examination will be considered to be conducted within a reasonable time.

6.2. Medical exams are primarily restricted to the collection of forensic evidence.

6.3. 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 continued the "Forensic Medical Examination Fund", created as a special fund in the State Treasury, into which shall be deposited legislative appropriations to the fund. The West Virginia Prosecuting Attorneys Institute, created by the provisions of section six, article four, chapter seven of this code, shall make expenditures from the fund, where it is determined to be practical by the executive council and the executive director to pay the costs of forensic medical examinations as



defined in section sixteen of this article, to train nurses to examine sexual assault victims and to reimburse the institute for its expenses in administering payments from the fund.

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.

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



RAPE REPORTING REQUIREMENTS FOR COMPETENT ADULT VICTIMS

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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.