

RAPE AND SEXUAL ASSAULT REPORTING REQUIREMENTS FOR COMPETENT ADULT VICTIMS

Teresa P. Scalzo, Esquire
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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*

For additional information, contact:

Teresa P. Scalzo, Esquire
Department of Defense
Sexual Assault Prevention and Response Office
1401 Wilson Boulevard, Suite 402
Arlington, VA 22209
teresa.scalzo@wso.whs.mil
703-696-8977

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 victim¹ who is a competent adult,² 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.³

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

¹ 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.

² *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.

³ 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 § 209A.030
 - Must report incidents of spousal rape to Kentucky Cabinet for Health and Family Services

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

- 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 funding⁴ 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 III⁵ 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."⁶ 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.
- Arkansas, A.C.A. § 12-12-403

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

⁵ H.R. 3402.

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

- 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. § 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.

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?

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