



Sexual Assault Forensic Exams in Your Community with Special Considerations for Youth Survivors

Federal and Washington State law have allowed for a significant amount of flexibility in how individual communities respond to the medical needs of survivors following a sexual assault. Although the Violence Against Women Act does outline some specific requirements in regards to the provision of sexual assault forensic exams, (which will be discussed below) it allows states to determine how these requirements will be met. In contrast to other states, Washington's legislature has been relatively quiet in terms of directing what the sexual assault forensic exam process looks like in the state. Although [RCW 70.125.060](#) provides that survivors can be accompanied by an advocate or other support person during the exam and [RCW 7.69.030](#) provides that law enforcement cannot interfere with a survivor's access to immediate medical assistance, Washington State law does not require the use of a specific exam protocol, or specify training standards for medical staff performing the exams. Additionally, neither federal nor state law dictates evidence storage protocols or requires individual communities to make alternative reporting options available to survivors.

The impact of this flexibility can be seen in the diversity of coordinated medical response practices instituted in communities across Washington State (for more details, see WCSAP's 2013 [Medical Advocacy Survey summary](#)). While we know that responses are often best when they are developed at the local level and directly informed by survivors and other stakeholders, we also know that it requires a tremendous amount of on-the-ground advocacy and collaboration to ensure that the outcome is victim-centered and reflective of emerging promising practice.

WCSAP often receives questions about providing medical advocacy for survivors of sexual assault. At what age can someone consent to a sexual assault forensic exam? How does billing work for the sexual assault forensic exam and follow-up medical services? What are the requirements for forensic exams in Washington? What reporting options are available to survivors when they present for an exam? Unfortunately, WCSAP is not always able to respond definitively to these questions because they often have community-specific answers.

With a focus on medical advocacy with youth survivors, this resource will outline some of the federal and Washington State laws that provide guidance on the rights of sexual

assault survivors related to the forensic exam and other types of medical care. It will also highlight the areas in which, absent legal requirements, finding the answers for the survivors you work with will require information-gathering at the community level to determine the policies and practices of your local medical providers.

What is Forensic Compliance?

“Forensic compliance refers to the two specific provisions within the federal Violence Against Women Act that first appeared in the 2005 reauthorization (and remain in place under the most recent reauthorization of VAWA 2012) regarding medical forensic exams for victims of sexual assault” (Lonsway, Huhtanen, and Archambault, 2013, p.2).

These provisions require that all states, territories, and tribal governments ensure that sexual assault survivors are provided with a medical forensic exam **free of charge and without any out-of-pocket expense** and with **no requirement to participate in the criminal justice process or cooperate with law enforcement** (EVAWI, 2013). Compliance with these provisions is required to maintain eligibility for federal STOP funding.

By eliminating the financial burden of the forensic exam and the pressure to make an immediate report to law enforcement, the forensic compliance provisions have multiple individual- and community-level benefits, such as:

- Increasing survivor access to prompt medical care, which reduces long-term health effects and often serves to connect survivors with additional resources and support.
- Increasing the likelihood of gathering forensic evidence and documentation to support future prosecution and successful case outcomes.
- Providing survivors the time to make an informed decision about reporting to law enforcement, which may ultimately increase a survivor’s willingness to make a report and participate in the criminal justice process.

Thus, forensic compliance can support the long-term health and healing of survivors and communities, while also improving the criminal justice system’s ability to hold offenders accountable.

The above content on forensic compliance was informed by the online training institute developed by Lonsway, Huhtanen, and Archambault referenced below.

In Washington State, the following laws and rules have been adopted to institutionalize compliance with the provision regarding payment for the forensic exam:

RCW 7.68.170. Examination costs of sexual assault victims paid by state

“No costs incurred by a hospital or other emergency medical facility for the examination of the victim of a sexual assault, when such examination is performed for the purposes of gathering evidence for possible prosecution, shall be billed or charged directly or indirectly to the victim of such assault. Such costs shall be paid by the state pursuant to this chapter.”

WAC 296-30-170. Who is required to pay for sexual assault examinations?

“When a sexual assault examination is performed for the purpose of gathering evidence for possible prosecution, the costs of the examination must be billed to the crime victims compensation program. We are the primary payer of this benefit. The client is not required to file an application with us to receive this benefit and may not be billed for these costs. If the examination includes treatment costs or the client will require follow-up treatment, an application for benefits must be filed with us (CVC) for these services to be considered for payment.”

As we know, however, upholding the victims’ rights that are outlined in federal and state law often depends on advocacy at the local level. If your local hospital is billing survivors for the initial exam instead of billing the Crime Victims Compensation Program, or they are refusing to perform an exam without a report to law enforcement, your agency may need to share the information above with your partners to instigate system change.

Questions to Ask Your Community Partners Concerning Sexual Assault Forensic Exams and Youth Survivors

While it is critical that you are informed of the exam process for all survivors (what is involved, how it is paid for, how evidence is handled) there are additional considerations when youth access forensic exams. Gathering the following information from your system partners will allow you to educate youth about their rights in this setting, and empower and enable them to make informed decisions about health care following an assault. Even in circumstances where youth do not have choices, advocates play a valuable role in ensuring that youth know what to expect during and after an exam. While Washington State statutes and case law provide *guidance* on some of the key issues, the policies and procedures of individual health care providers may ultimately determine how things look in practice.

At what age can a minor independently consent to a sexual assault forensic exam?

Background

The age at which minors are allowed to independently consent to sexual assault forensic exams varies widely across the state. Although there are Washington State statutes and case law that allow minors to consent to specific health services (see *Providing Health Care to Minors under Washington Law* below), none of these statutes explicitly address the forensic exam.

Without this clear guidance, SANE programs can fall back on the precedents set by these other minor consent statutes and case law, as well as the *Mature Minor Doctrine*. The *Mature Minor Doctrine* allows minors to consent for health care “if they are capable of understanding or appreciating the consequences of a medical procedure. In determining whether the patient is a mature minor, providers will evaluate the minor’s age, intelligence, maturity, training, experience, economic independence or lack thereof, general conduct as an adult and freedom from the control of parents” (Columbia Legal Services et al., 2007).

Remember, a sexual assault forensic exam should never be performed against a survivor’s wishes. Even if youth cannot independently consent to an exam in your community, they still have the right to decline any and all parts of the exam. Thus, if a medical provider requires parental consent to perform a youth exam, the provider should ALSO give the youth information about what each part of the exam will entail and seek the youth’s consent during each step.

Follow-Up In Your Community

Contact the medical providers in your community who provide sexual assault forensic exams for youth and discuss their policies. Have they established an age of consent for the exam or do they always refer to the *Mature Minor Doctrine* and make a determination on a case-by-case basis? If they rely on the *Mature Minor Doctrine*, what does this look like in practice? If they do not allow anyone under the age of 18 to consent to the exam, is this an area for systems advocacy by your agency?

Youth may not access health care services because they are unaware that they are able to do so independently. Thus, it is essential that all staff at your agency, including those answering the hotline, have accurate information about the age of consent for sexual assault forensic exams in your area.

Who has access to the health care records of the youth following a sexual assault forensic exam?

Background

A sexual assault forensic exam will trigger a mandatory report, which will most likely be made by the medical professional performing the exam if the survivor has not previously disclosed the assault. [RCW 26.44.030\(12\)\(a\)\(ii\)](#) states that “in conducting an investigation of alleged abuse or neglect, the department [CPS] or law enforcement agency...shall have access to all relevant records of the child in the possession of mandated reporters and their employees.” Thus, in contrast to an adult survivor who can choose whether to make a report and/or release their medical records to law enforcement, a minor cannot prevent disclosure of the records for the purpose of the investigation. Additionally, once medical records are released to an entity NOT covered by the Health Insurance Portability and Accountability Act (HIPAA), such as law enforcement or CPS, there is no guarantee of further protection of that information.

Many youth are specifically concerned with parental access to information and records from the exam. Outside the context of a law enforcement or CPS investigation, federal and Washington State laws do provide the minor the right to control the release of this information when the minor has consented independently to the exam. Thus, the health care provider should not release information or records to the minor’s parents or other service providers without the minor’s consent.

The *HIPAA Privacy Rule* was issued under the Health Insurance Portability and Accountability Act of 1996. For HIPAA-covered entities and services, it “provides that, in general, when minors legally consent to health care or can receive it without parental consent, or when a parent has assented to an agreement of confidentiality between the minor and the health care provider, the parent does not necessarily have the right to access the minor’s health information. Whether a parent may do so depends upon state or other applicable law” (English, Bass, Boyle, and Eshragh, 2010, p. 7).

In Washington:

[RCW 70.02.130](#) “provides that a person authorized to consent to health care for another may exercise the rights of that person with respect to health care information access and disclosure. If the patient is a minor and is authorized to consent for health care without parental consent under federal and state law, only the minor may exercise the rights of a patient under the Uniform Health Care Information Act as to information pertaining to health care to which the minor lawfully consented” (English et al., 2010, p. 16).

[WAC 284-04-510](#) “provides that a minor who may obtain health care without the consent of a parent or legal guardian under state or federal law may exclusively exercise

the rights to limit disclosure of health information. These rights include the right to request that disclosure not be made to specific individuals and that information about certain services (reproductive health, sexually transmitted disease, chemical dependency, and mental health) not be disclosed including through appointment notices, appointment confirmation calls, bills, and explanation of benefits” (English et al., 2010, p. 16).

Follow-Up In Your Community

Contact the medical providers in your community who provide sexual assault forensic exams for youth and discuss their policies.

- What information from a youth survivor’s medical record is given to law enforcement or CPS when requested as part of a sexual assault investigation?
- What is the provider’s procedure if a parent requests the youth’s records from the medical exam?
- Are there any circumstances in which they would not obtain permission from the youth survivor prior to releasing information or records to a parent?
- What if the request is from another service provider?
- Do they determine who consented to the exam prior to responding to a request for information?

You may need to contact the records department in order to get this information. If so, make sure to check in with medical staff about the information so any explanations given to the survivor by the advocate and the medical staff are consistent. If it is standard practice for the medical provider to always release information to a youth’s parent without the youth’s consent, you may want to request an explanation of this policy to determine if systems advocacy is needed.

Contact the local law enforcement unit that handles sexual assault cases and CPS to discuss their policies.

- What medical information gathered as part of an investigation would become available to attorneys involved in a criminal case?
- What medical information gathered as part of an investigation would be shared with a parent upon request?
- What medical information gathered as part of an investigation could potentially be accessed by the public?
- Discuss the possible impacts of these disclosures on survivors and explore whether there are changes that can be made in practice to support successful investigations and prosecutions while still protecting survivors’ privacy.

Studies have shown that the youth population under-utilizes health care and that confidentiality is a primary concern. Advocating for youth survivors’ confidentiality

based on the protections in federal and Washington State law and providing clear explanations of what confidentiality looks like in the context of a sexual assault medical exam can reduce this barrier to health care access for the youth you serve. Even with these protections in place and the knowledge that you have gathered in your community, survivors should still be encouraged and empowered to ask providers about their confidentiality obligations and practices when seeking any type of health care.

Will the survivor's parents be notified of the exam?

Background

If a youth survivor is allowed to independently consent to the exam under the *Mature Minor Doctrine*, there is no legal requirement for a medical provider or law enforcement officer to notify a youth's parents of the exam. In this situation, notification at the time of the exam should be dictated by the wishes of the survivor and any safety considerations.

Although advocates will not notify youth survivors' parents of the exam, advocates **cannot** guarantee youth survivors that their parents will not eventually learn of the assault through other sources. Once a mandatory report is made and an investigation ensues, it is highly unlikely that a parent or guardian will not eventually be notified. This is partially due to [RCW 26.44.030\(12\)\(a\)\(i\)](#) which requires that law enforcement and/or CPS notify a minor's parent of an interview conducted as part of an investigation of child abuse or neglect.

Follow-Up In Your Community

Contact the medical providers and law enforcement first responders in your community to determine if there is an existing practice in this area. If it is protocol to notify youth survivors' parents when they present for an exam, explore how and why this came to be. Is this protocol victim-centered and are there any conflicts with existing confidentiality protections? In these conversations, you will also want to clarify that notifying a parent of the exam does not mean that the parent then has automatic access to information about the youth's exam.

Additionally, you and your system partners may want to discuss how to talk with youth survivors about the option for parental involvement in a trauma-informed way. Help your partners to understand that even when parents are supportive, youth still may not want them to have access to their records and/or be active decision makers during and after the exam.

What if the minor survivor seeks medical care that is billed to a parent's insurance?

Background

As discussed above, the initial forensic medical exam should be billed directly to Washington State's Crime Victims Compensation (CVC) program and should not be processed through the survivor's insurance. However, when a survivor applies to CVC for costs associated with follow-up medical care or care outside of the covered components of the initial exam, the survivor's (or the survivor's parents') insurance must be billed before CVC will reimburse these costs.

Follow-Up In Your Community

Work with youth survivors to help them determine what insurance billing documents will detail and what information the insurance company would provide to the policy holder if requested. Ensure that survivors are aware of their rights under WAC 284-04-510 (referenced above) and the process for requesting that insurance providers not disclose health information related to any services they have independently consented to.

If a survivor is not comfortable with this option, be prepared to provide the youth with informed referrals for medical providers that offer free or sliding scale services that will not require the use of a parent's insurance. Remember, providing informed referrals for additional health care services in your community will entail asking these providers some general questions regarding access to services and confidentiality similar to those outlined above.

Go Forward!

This resource is not intended to provide all the answers but rather to get you thinking about what you want the medical response to survivors to look like in your community. If you have concerns about the answers you receive when exploring the issues discussed above, you have the power to instigate change! Indeed, the tremendous advocacy across Washington State illustrates that your work is invaluable to ensuring that survivors' rights are upheld and promising practices are implemented through collaboration.

This resource may prompt additional questions about youth access to medical care or your community's coordinated response to survivors. WCSAP welcomes your questions and ideas, so please feel free to contact us at 360-754-7583 or info@wcsap.org

References

Columbia Legal Services, Seattle & King County Public Health, and UW Medicine. (2007). *Providing Healthcare to Minors Under Washington Law*. Retrieved from <http://www.wcsap.org/sites/wcsap.huang.radicaldesigns.org/files/uploads/documents/HealthCaretoMinors.pdf>

End Violence Against Women International (EVAWI). (March 2013). *Training Bulletin: VAWA 2012 Prohibits Exam Costs for Victims and Requires Public Education*. Retrieved from https://www.evawintl.org/images/uploads/2013-03_VAWA_2012_Prohibits_Exam_Costs_for_Victims.pdf

English, A., Bass, L., Boyle, A.D., and Eshragh, F. (2010). *State Minor Consent Laws: A Summary, 3rd Edition, Washington*. Center for Adolescent Health & The Law.

Lonsway, K., Huhtanen, H., and Archambault, J. (2013). *The Earthquake in Sexual Assault Response: Implementing VAWA Forensic Compliance*. Online Training Institute module. End Violence Against Women International. A transcript of the course can be retrieved from http://olti.evawintl.org/images/docs/FC_Module_06-04-13_FORMATTED.pdf

Reading, Resources & Tools

Recommended Guidelines for Washington State. Sexual Abuse Medical Evaluation of Children 12 Years and Younger

Harborview Center for Sexual Assault and Traumatic Stress

<http://depts.washington.edu/hcsats/PDF/guidelines/Recommended%20Guidelines%20Sexual%20Abuse%20Medical%20Evaluation%20Child%202012.pdf>

Recommended Guidelines for Washington State. Sexual Assault Emergency Medical Evaluation of Adults and Adolescents

Harborview Center for Sexual Assault and Traumatic Stress

<http://depts.washington.edu/hcsats/PDF/guidelines/Adult%20Adolescent%20Recommended%20Guidelines%202010.pdf>

A National Protocol for Sexual Assault Medical Forensic Examinations: Adults/Adolescents

U.S. Department of Justice Office on Violence Against Women

<https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf>

Health Information Privacy: Personal Representatives

U.S. Department of Health and Human Services

<http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/personalreps.html>

Providing Care to Sexual Assault Victims Who Are Minors: A Consent & Confidentiality Tool for SANEs, Advocates and Other Victim Service Providers

Victim Rights Law Center

<http://www.safeta.org/associations/8563/files/At%20What%20Age%20May%20a%20Minor%20Consent%20to%20CHART%20FINAL.pdf>

End Violence Against Women International

This website has a wealth of information and tools related to forensic compliance and the development of medical response community protocols.

<http://www.evawintl.org/Forensic-Compliance>