



Department of Criminal Justice Services Frequently Asked Questions (FAQ)

Physical Evidence Recovery Kit (PERK) Authorization and Payment:

Improving Access to Sexual Assault Forensic Examinations

Amendments to the Code of Virginia (See §§ 19.2-165.1, 19.2-368.3, and 19.2-368.11:1) effective July 1, 2008, make significant changes to laws describing the provision of, and payment for, forensic examinations in sexual assault cases. These changes bring Virginia into compliance with federal law. The laws essentially require that victims must have access to forensic exams, even if victims choose not to participate in the criminal justice system, or otherwise cooperate with law enforcement authorities. Additionally, the state must pay for all out-of-pocket costs associated with the gathering of evidence. The federal and state laws do not mandate specific implementation steps. In addition to this FAQ, the Department of Criminal Justice Services (DCJS) has developed a model law enforcement directive. See <http://www.dcjs.virginia.gov/cple/sampleDirectives/manual/rtf/2-31.rtf> which local law enforcement departments are encouraged to adapt and adopt. The model directive can serve as a vehicle to promote collaboration among law enforcement agencies and allied professionals within communities resulting in the development of complementary, comprehensive, multi-disciplinary victim-centered policies.

These changes in law and policy are intended to reduce trauma to sexual assault victims, while streamlining and improving the collection of forensic evidence in cases of sexual assault. It is anticipated that the new legislation may increase the number of victims reporting sexual assaults to law enforcement agencies. Implementing these Code changes will require local law enforcement officials, sexual assault crisis center advocates, healthcare providers, victim advocates, and allied professionals to develop local implementation strategies and policies that protect victims, while promoting the public safety interests of the community.

The document presented below is intended to address some of the most frequently asked questions regarding the statutory changes and their implementation.

Q: What are the new federal and state laws regarding sexual assault forensic examinations?

A:
Federal Law

The Violence Against Women and Department of Justice Reauthorization Act of 2005 ("VAWA 2005"), 42 U.S.C. § 3796gg-4(d), provides that states may not "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, reimbursed for charges incurred on account of such an exam, or both" (the "VAWA 2005 forensic examination requirement"). Under this provision a state must ensure that victims have access to an exam, and that the state will pay for the exam, even if the victim chooses not to participate in the criminal justice system, or otherwise cooperate with the criminal justice system or law enforcement authorities.

States must certify that they comply with these provisions to be eligible to continue to receive federal funds available through the federal Violence Against Women Act (VAWA). Virginia currently receives approximately \$2.5 million annually through VAWA - STOP funds and awards V-STOP grants to support programs and initiatives in law enforcement, prosecution, victims' services, advocacy and court-based programs throughout the Commonwealth.

State Law

House Bill 956 and Senate Bill 312, passed during the 2008 Session of the General Assembly and signed by Governor Kaine, bring Virginia into statutory compliance with the federal VAWA requirements. These bills clarify that all sexual assault forensic examinations conducted are to be paid by the Commonwealth, whether or not victims cooperate with law enforcement authorities and/or participate in the criminal justice system. Additionally, these bills indicate that the Criminal Injuries Compensation Fund (CICF) can pay health care providers directly for the costs of performing the physical evidence recovery kit (PERK) examinations used in cases of sexual assault. (See §§ 19.2-165.1, 19.2-368.3, and 19.2-368.11:1)

Q: Is authorization required in order for a PERK examination to be conducted?

A. No. Authorization by Commonwealth's attorneys, law enforcement officers, or their designees is no longer required in order for a victim to obtain a PERK examination, or for that examination to be paid for by the Commonwealth. Not allowing victims of sexual assault access to PERK examinations violates the law. Providing accurate and objective information that assists victims in making informed decisions about reporting is important and complies with the spirit of the law.

Q: Does a victim need to make a police report in order to have a forensic examination completed and paid for?

A: No. A report by the victim to a law enforcement agency is not required, and such a requirement would violate the new statute. Victims have the right to refuse to speak to law enforcement officers. It is certainly reasonable, however, to advise victims that their decisions to delay reporting to police, will make successful investigation and prosecution of their cases more difficult. Victims should also be advised that the PERK kit will be turned over to a law enforcement agency, and that each agency has the authority to initiate an investigation on its own if they so choose. This fact speaks to the importance of law enforcement agencies working closely with victims services providers, health care providers, and their Commonwealth's Attorney to establish a consistent policy that gives consideration to both public safety priorities and to the needs of the victims of sexual assaults.

Q: What happens if a victim consents to an exam, but is reluctant to report the crime and/or cooperate further with law enforcement authorities?

A: Although it is anticipated that the majority of sexual assault victims will consent to cooperate with law enforcement officials, subsequent to the forensic medical examination and evidence collection (PERK) process, there may be instances in which a victim chooses not to cooperate initially.

Law enforcement personnel should follow standard state and local procedures in taking custody of the evidence available, along with any personal information about the victim that may be available at that time. The officer/investigator should inform the victim, if the victim consents to meet with him/her, that the release of evidence is not a commitment to prosecute. The intent is to enable the victim to make an informed decision.

If kits will be stored at the law enforcement agency, kits and clothing bags should be stored in a refrigerated, locked, secure area, in accordance with locally agreed upon procedures. Capacity to appropriately store evidence on a temporary basis will vary by locality. The law does not currently mandate specific procedures in this regard. Therefore, localities have the discretion to develop procedures that fit best with local resources and practices.

Q: Do the VAWA 2005 and state law changes require "Jane Doe Rape Kits" or "anonymous reporting?"

A: No, Virginia is not required to institute anonymous reporting. Some states and localities are instituting it voluntarily. Under VAWA 2005, states are only required to ensure that victims will not incur costs associated with the gathering of forensic evidence, regardless of whether they choose to report the sexual assaults to law enforcement authorities or cooperate with the criminal justice system.

Since anonymous reporting is not mandated by law, localities that choose to implement anonymous reporting should develop local policies which outline the handling and preservation of evidence collected in cases where victims do not wish to make a formal police report. The current DCJS sample directive on sexual assault investigations does not outline a so-called “Jane Doe” or “blind reporting” or “anonymous reporting” process. Local officials interested in implementing such a process should consider it in consultation with their local prosecutors, victim services agency partners, health care providers, and/or hospital representatives, and forensic lab personnel.

Q: What is a “Jane Doe Rape Kit?”

A: A “Jane Doe Rape Kit” is the common name for the forensic evidence collected during a sexual assault examination of a victim who chooses to remain anonymous. A “Jane Doe Rape Kit” enables a victim to have forensic evidence collected without revealing identifying information to law enforcement authorities. Victims are given a code number (most often the PERK identification number) they can use to identify themselves if they choose to report later, and they are not required to cooperate with law enforcement or criminal justice authorities. Some states and localities provide this option to victims who are not ready to report to law enforcement at the time of the examination.

Q: What are some of the issues victims need to be aware of while considering whether to report a crime and/or cooperate in a law enforcement investigation?

A: Before law enforcement authorities are called or any evidence collection examination is undertaken, it is essential that victims understand that involving law enforcement authorities and/or consenting to the PERK exam can impact their privacy and their ability to control access to information related to the assault. In order for victims to make the most informed decisions regarding their options, it is critical that they understand the implications and/or consequences of not reporting to law enforcement in a timely manner. These include:

- Law enforcement may not be able to collect evidence at the scene of the crime or from the perpetrator.
- It is possible that delay would prevent witnesses being interviewed in a timely manner.
- Delayed reporting could make it more difficult to prosecute a case in the future.
- Evidence could deteriorate over time, rendering the evidence collected through the PERK examination less useful or compromised.
- Identifying information at the hospital or treatment facility is subject to subpoena by law enforcement, should law enforcement deem it necessary to open an in-

vestigation. Thus victims should be informed about local hospital and law enforcement practices.

- Victims should be notified that by consenting to a PERK examination, they are consenting to having the kit submitted to law enforcement officials.
- Even if the victim chooses not to cooperate with law enforcement, the victim's name and/or other identifying information may be released to law enforcement when they pick up the PERK kit.
- The length of time the kit will be stored for possible prosecution in the future may vary from jurisdiction to jurisdiction; victims should be made aware of what the local policies are regarding length of storage.
- If the kit is taken to a Department of Forensic Science lab, it will be analyzed for DNA and may be used as evidence in other cases if necessary.

Advocates, forensic nurses and other medical staff play a critical role in conveying this information so that a victim can make the best, most informed decision. Law enforcement agencies may enhance the likelihood of victims cooperating by establishing close working relationships with sexual assault crisis center advocates, victim services and medical agencies, in advance of actual instances of crime.

Q: Does the law require that Virginia pay for forensic exams?

A: Yes. VAWA indicates that each state may develop its own means to reimburse medical facilities or victims for these examinations. A state's procedure should ensure that medical facilities that offer forensic examinations will provide those examinations for every patient who requests one, regardless of whether the patient chooses to report a sexual assault to law enforcement.

Effective July 1, 2008, the Supreme Court of Virginia will no longer be responsible for payment of sexual assault forensic examinations or Physical Evidence Recovery Kits (PERKs). The Criminal Injuries Compensation Fund (CICF) will now process payment of these examinations.

Important notes regarding the changes to §19.2-165.1 of the Code of Virginia and new payment process are presented below.

- As of July 1, 2008, **adult** victims, aged 13 years and older, of an alleged sexual assault are **no longer** required to report the offense to law enforcement in order to have a sexual assault forensic examination *or* for payment by CICF. Mandatory child and elder abuse reporting requirements still apply.
- CICF will pay for costs associated with a **sexual assault** forensic exam. PERKs, or forensic examinations for any other purpose (such as child physical abuse, gun shot wounds, perpetrator PERKs, etc.), still have to be approved by

the local Commonwealth's Attorney or his/her designee in advance of the examination per rules of the Virginia Supreme Court's Criminal Fund. The Criminal Fund will reimburse non-sexual assault evidence collection in accordance with their rules.

- ☑ Hospitals and care providers **must bill CICF directly** with an itemized statement and Request for Payment form. This means bills for sexual assault forensic examinations should no longer be sent to the local Victim/Witness Programs to process payment. If a Victim/Witness program receives a bill in error, they should forward it immediately to CICF.
- ☑ Bills for exams completed **prior** to July 1, 2008 that are submitted for payment **after** July 1, 2008 still require authorization by the local Commonwealth's Attorney, or his/her designee, but should be mailed to CICF.
- ☑ Once the bill has been sent to CICF for consideration, the patient may **not** be placed into collections.

Q: What costs are covered for reimbursement according to the new CICF policies?

A: All costs associated with the collection of forensic medical evidence will be paid for by the Commonwealth. This includes professional service fees (which includes the collection of the actual PERK kit), emergency department fees, laboratory fees, pregnancy testing, medications such as pregnancy and STI prophylaxis, and ambulance transportation to facilities that have the capacity to complete a PERK examination.

Q: What costs are not covered for direct reimbursement to the hospital, according to the new CICF policies?

Costs not included for reimbursement include the following:

- Cost of treating injuries
- Follow-up or second appointments
- Duplicative services
- Medications filled off-site
- Air transport
- Follow-up medications
- Counseling
- Lost wages due to physical or emotional injury

For victims who cooperate with law enforcement authorities, some of these costs (for example medical costs, counseling, lost wages) may be covered if victims apply to the Criminal Injuries Compensation Fund, through the traditional claims process. Applica-

tions are available through local victim/witness programs or on-line at <http://www.cicf.state.va.us/>

Q: Where can I find further information relating to PERK payment policies and procedures?

A: Information relating to PERK payment policies and procedures, as well as requests for payment forms, can be obtained on the CICF website at http://www.cicf.state.va.us/forensic_exams.shtml

Q: What assistance is available to localities in implementing these legislative changes?

A: DCJS Model Policy

DCJS has developed a sample directive to assist local law enforcement agencies in updating their current policy on handling sexual assault cases. See <http://www.dcjs.virginia.gov/cple/sampleDirectives/manual/rtf/2-31.rtf>

- Local agencies are strongly encouraged to consult with their Commonwealth's Attorney, Sexual Assault Crisis Centers, and any other Victims Services agencies with whom they have, or wish to have, a working partnership for the handling of sexual assault cases and victims services. For contact information about resources in your area, call or e-mail Erin Osborne at DCJS, Victims Services Section, (804) 371-0386, or erin.osborne@dcjs.virginia.gov.
- Local agencies are also strongly encouraged to develop protocols and agreements with their local hospital emergency departments, Forensic Nurse Examiners or Sexual Assault Nurse Examiners' programs, or other medical facilities that handle sexual assault victim examinations in the development of their policy.
- Agencies that utilize the Department of Forensic Science labs to process and analyze evidence in sexual assault cases are encouraged to verify that their local policy is congruent with guidelines established by DFS.

B. Training and Technical Assistance

For additional information and specific technical assistance based on your needs or professional role, please contact the most appropriate individual:

Law Enforcement Policies

DCJS is available to respond to local law enforcement agencies' questions regarding developing policy for law enforcement. Contact Ernie O'Boyle at (804) 786-7811, or Ernie.Oboyle@dcjs.virginia.gov, or Tim Paul at (804) 786-2407, or Tim.Paul@dcjs.virginia.gov.

Payment for PERKS

Training on billing and payment issues can be requested by contacting Kelly Carpenter at the **Criminal Injuries Compensation Fund (CICF)** at (800) 552-4007 or Kelly.Carpenter@vwc.state.va.us.

DCJS Victims Services

Contact Erin Osborne, Victim Services Analyst, at (804) 371-0386 or Erin.Osborne@dcjs.virginia.gov

Department of Forensic Science

Please contact the Department of Forensic Science for information relating to their services.

Virginia Chapter of the International Association of Forensic Nurses

Contact Sue Carson, President, at (804) 712- 4992 or mcv4ren6rn@verizon.net.

Virginia Sexual and Domestic Violence Action Alliance

Contact Kristine Hall, Sexual Violence Advocacy Manager, at (434) 979-9002 or khall@vsdvalliance.org.