

NON-REPORTING VICTIM SEXUAL ASSAULT KIT PROTOCOL

STATEMENTS:

This protocol is in effect as of July 1, 2016. This protocol will be updated as needed based on changes in statutes and best practice.

This protocol is implementing several Georgia State Statutes. The Official Code of Georgia (O.C.G.A. §17-5-72) states that: A victim shall have the right to have a free forensic medical examination regardless of whether the victim participates in the criminal justice system or cooperates with law enforcement in pursuing prosecution of the underlying crime.

This law provides a medical forensic examination to a victim(s) (patient) of sexual assault without reporting to law enforcement.

The sexual assault forensic examiner is required by law to initiate a report to law enforcement and/or Department of Family and Children Services (DFCS) when the alleged sexual assault victim is 17 years of age or less.

PROCEDURE:

1. Sexual assault victim (patient), family or friend contacts the sexual assault center, hospital, or law enforcement to report a sexual assault.
2. Victim (patient) is provided a sexual assault victim advocate from the local sexual assault center for support.
3. Victim (patient) does not want to report sexual assault to law enforcement but desires to have a sexual assault forensic medical examination completed.
4. Sexual assault center or hospital contacts the sexual assault forensic examiner or other appropriate medical staff (physician, physician assistant, nurse practitioner) to conduct the sexual assault forensic medical exam.

(It is highly recommended and best practice that the medical staff performing the sexual assault forensic medical exam is trained in doing these specific exams.)

5. The national guideline from the International Association of Forensic Nurses (IAFN) recommends collection of forensic evidence within 120 hours/5 days. This timeframe may be longer depending on the circumstances of the crime.

NON-REPORTING VICTIM OF SEXUAL ASSAULT

6. The sexual assault forensic examiner will conduct an exam to include the completion of a Sexual Assault Forensic Medical Evidence Collection Kit (Rape Kit), photographic documentation of any physical findings, and completion of a forensic medical record.

The victim (patient) can refuse at any point prior to or during the exam any portion of the exam.

7. A victim (patient) “shall not be required to pay, directly or indirectly, for the cost of a forensic medical examination. The cost of a forensic medical examination shall be paid for by the Criminal Justice Coordinating Council, Crime Victims Compensation program.” (O.C.G.A. §17-5-72) <https://cjcc.georgia.gov/victims-compensation>
8. The Sexual Assault Forensic Examiner shall maintain chain of custody of all forensic evidence until all evidence is turned over to the receiving law enforcement agency (unless other arrangements are made based on a community’s protocols or procedures).
9. Law enforcement is responsible for the retrieval and storage of forensic evidence, for not less than 12 months from the date of the forensic medical examination (unless other arrangements are made based on a community’s protocols or procedures).

(O.C.G.A. §17-5-71)

Preservation of evidence (a) Except as otherwise provided in subsection (b) of this Code section or Code Section 17-5-55 or 17-5-56, on or after May 12, 2008,

(b) If the victim does not cooperate with law enforcement in the investigation or prosecution of an alleged sexual assault, the investigating law enforcement agency shall maintain any physical evidence collected as a result of such alleged sexual assault that contains biological material, including, but not limited to, stains, fluids, or hair samples that relate to the identity of the perpetrator of the alleged sexual assault, for not less than 12 months from the date any such physical evidence is collected.

10. A Non-Reporting Consent Form must be signed by the victim (patient) stating that the forensic medical records, clothing, and forensic evidence will be turned over to the appropriate law enforcement and held for 12 months.
11. The sexual assault forensic examiner provides the following information to the non-reporting victim (patient) that includes:
 - i. “The person performing a forensic medical examination, or her or his designee, shall provide the victim with a written summary of all rights that are guaranteed to him or her under the Crime Victims’ Bill of Rights”, as provided by the Criminal Justice Coordinating Council. O.C.G.A §35-1-2, O.C.G.A §17-17-1 – 17-17-16

NON-REPORTING VICTIM OF SEXUAL ASSAULT

- ii. The Case Record Number
- iii. Date and Time of the Forensic Medical Examination
- iv. The Law Enforcement Agency who will be the receiving the forensic evidence collected for storage purposes (unless other arrangements were made)
- v. The name and location of the center/facility where the medical forensic examination was conducted

12. The victim (patient) is made aware at the time of the exam that the evidence will remain in storage until either the victim (patient) wants to proceed with the case, or 12 months has expired and the evidence may be destroyed.

The evidence/kit shall not be sent to the state crime lab without the victim's consent and their prior approval.

13. If a victim (patient) decides that she/he would like to report the crime to law enforcement and have their kit sent to the state crime lab, the victim (patient) must notify the sexual assault center or law enforcement agency that is storing the kit that she/he would like to report the crime to law enforcement and have their evidence including the sexual assault forensic evidence collection kit sent to the state crime lab.

It is recommended that the victim (patient) be contacted every 2 to 3 months regarding the timeframe remaining to file a report.

* Note (O.C.G.A. §35-1-2), Georgia's new statute link is:
<http://www.legis.ga.gov/legislation/en-US/Display/20152016/SB/304>

A special thanks to Representative Scott Holcomb and his legislative colleagues for their commitment to ensuring that victims are treated with dignity and respect and ensuring that justice is served.

We would like to also thank all of the sexual assault centers who contributed to this document. In addition, we want to acknowledge the special contribution made by the Statesboro Regional Sexual Assault Center for their work and dedication.

This document is not intended to give legal advice or recommendations. This material is intended for general information purposes only and does not constitute legal advice. For legal issues that arise, the reader should consult legal counsel.

This sample protocol is provided by the Georgia Network to End Sexual Assault. If you have any questions or need further resources, please do not hesitate to contact our office at (404) 815-5261 or visit our website at www.gnesa.org.

**NON-REPORTING SEXUAL ASSAULT VICTIM'S CONSENT FOR
A FORENSIC MEDICAL EXAMINATION**

Name: _____ Date of Birth: _____

Date: _____ Time: _____ CRN: _____ H: _____

Agency Exam Completed: _____

Law Enforcement Agency: _____

Investigator/Detective: _____

Department/Cell: _____

I, _____, sign this document stating that I desire a forensic medical examination by a forensic examiner; the collection of all forensic evidence including, but not limited to, biological materials such as stains, fluids, or hair samples, and clothing; and the completion of a forensic medical record including photographs. The forensic examiner will maintain the chain of custody of the forensic evidence and will transfer the forensic evidence to the appropriate law enforcement agency.

By signing this document/consent form, I, _____, state that I understand that I have until _____ (12 months from today's date) to file a complaint to the appropriate law enforcement agency. According to Georgia law (O.C.G.A. Section 17-5-71, the law enforcement agency shall maintain any physical evidence collected..... for "not less than 12 months from the date any such physical evidence is collected." I have had everything explained to me in detail and verify that I understand the process.

Patient's Name Date/Time Witness Date/Time

Guardian Date/Time