

# **Victim rights and sexual assault forensic exams**

Jenna Cassady, JD

KY Assoc. of Sexual Assault Programs

# **Key Acronyms**

**LE = Law Enforcement**

**CHFS = Cabinet for Health and Family Services**

**CPS = Child Protective Services**

**APS = Adult Protective Services**

**RCC = Rape Crisis Center**

**KRS = Kentucky Revised Statutes**

**KAR = Kentucky Administrative Regulations**

**SAFE = Sexual Assault Forensic Exam**

**SANE = Sexual Assault Nurse Examiner**



**KENTUCKY ASSOCIATION  
OF SEXUAL ASSAULT  
PROGRAMS**

# Key Understandings

1. Every ED in KY must provide a SAFE when requested by a victim, whether or not a SANE is available.
2. Victim consent determines whether a SAFE is executed and whether a police report is made.
3. SAFE is an optional tool that may support a sexual assault investigation.
4. ED is required to contact RCC prior to a SAFE.
5. Minor victims can consent to a SAFE on their own.
6. All victims are entitled to treatment for HIV, STI, pregnancy (not abortion), & emergency contraception
7. Police cannot force a victim to cooperate with a sexual assault investigation, nor undergo a SAFE.
8. When you have a child victim, you are required to follow the “Kentucky Medical Protocol for Child Sexual Assault/Abuse Evaluation”.
9. If the assault was within 96 hours, you shall utilize the SAFE.
10. Examination facilities are prohibited from releasing a kit without victim authorization. The facility must store unreported kits for up to one year and follow victim instruction on whether to destroy the kit.

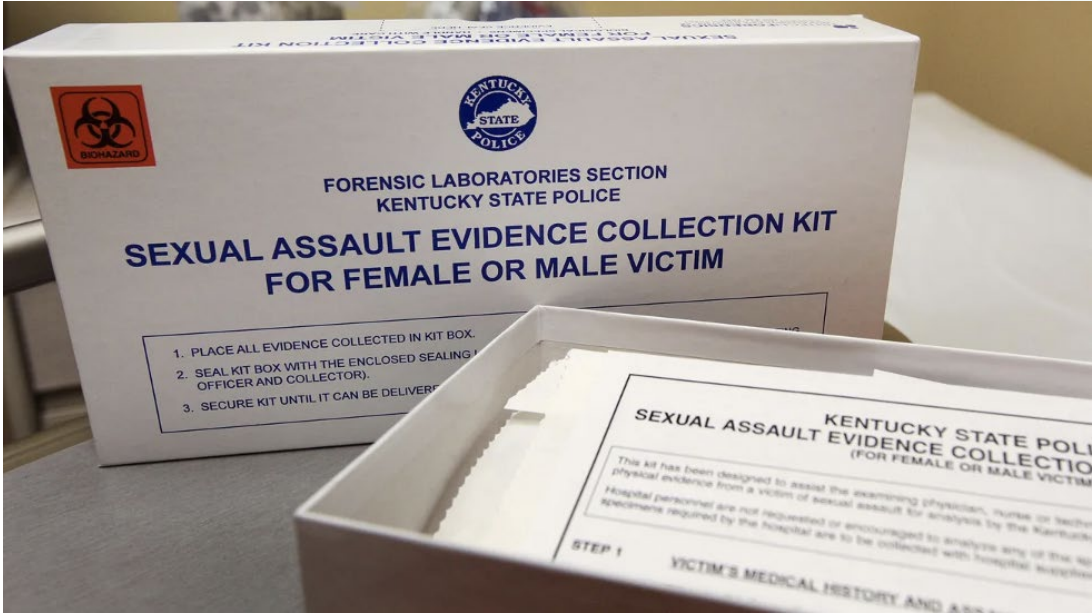
# Mom leaves 7-year-old child with babysitter

Mom brings child to clinic because when she returned home, child reports sexual abuse

# Case: STI as indicator of SA

- A 15 year old girl sought treatment for painful genital ulcers on the labia majora.
- She was discharged with a diagnosis of “aphthous ulcers” and given a prescription for Acyclovir.
- Mom went to the pharmacy to fill the prescription, and recognized that Acyclovir is treatment for Herpes. She asked the teen how she got herpes, and the teen disclosed that she was having sexual intercourse with an adult man in his 50’s.
- Mom called the police.
- Teen reported at the time of CAC visit that there was oral vaginal contact two weeks prior to the herpes diagnosis.
- The girl subsequently had another outbreak and PCR of the lesions was positive for HSV 1.

# Sexual assault evidence collection kit



# SAECK tracking portal

<https://ksponline.ky.gov/safekit/>

Search by Kit ID

About

Rape Crisis Centers

FAQ

Legal Steps

Links

5643

Kits Collected

1169

Kits Not Reported

2690

Kits At Lab

2690

Kits Completed

KIT TESTING

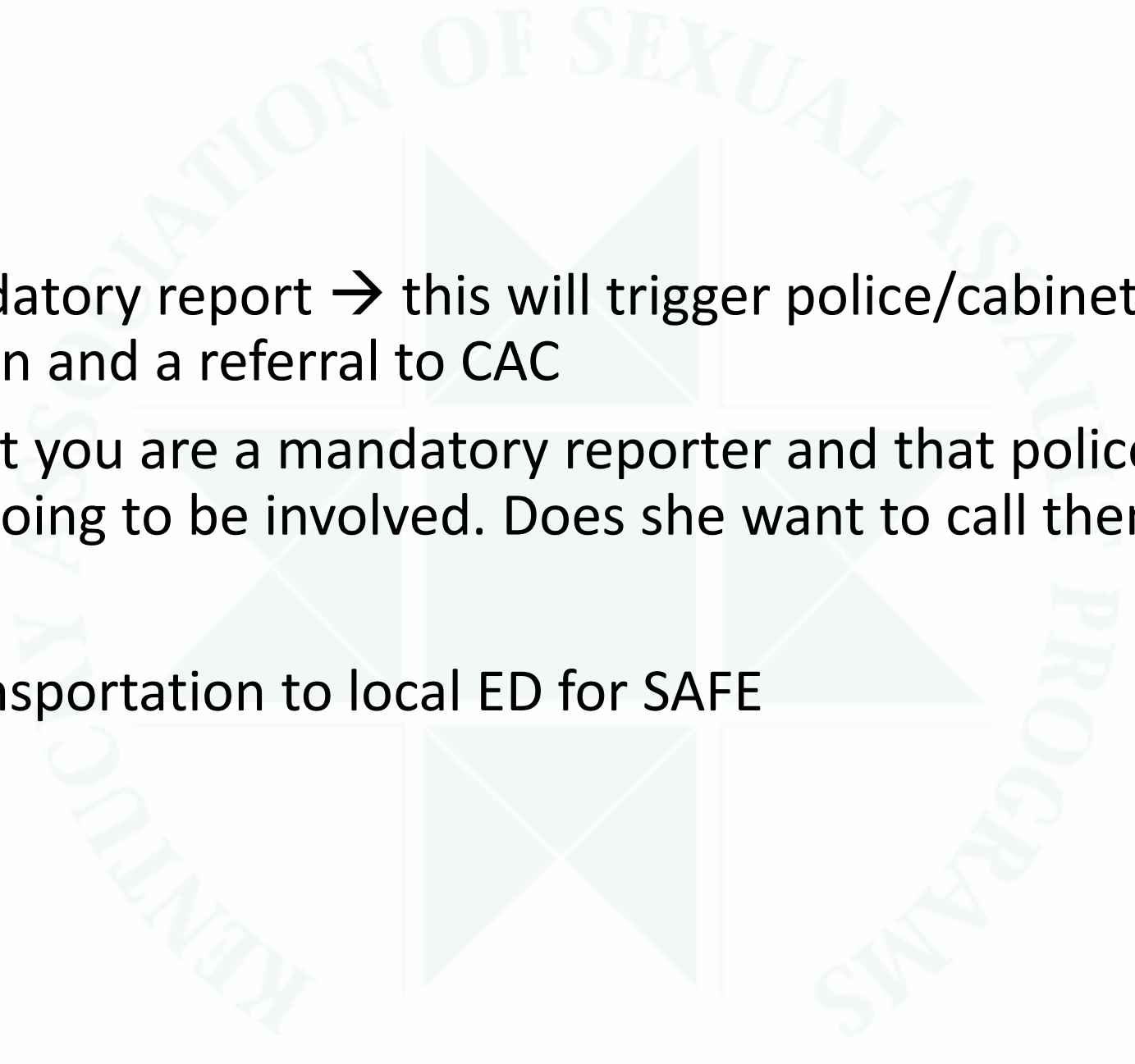
KSP Laboratories

In 2012, the KSP Laboratory staff began a statewide program to locate sexual assault evidence collection kits that had been sitting on the shelves of police storage facilities, having never been submitted to the lab for testing. Some of these kits were from recent assaults and others from attacks years ago

KSP Central Lab

The KSP Laboratory worked with law enforcement agencies to have the kits submitted to the laboratory where they were labeled as "Sexual Assault Initiative Cases" and grant money was sought to have the cases worked.

15-year-old Sally just ended a 'relationship' with her 20-year-old basketball coach. Their most recent sexual encounter was about 12 hours ago. She comes to the clinic and requests a SAFE. She does not want her parents to know. She does not want to call police. What do you do?

- 
- A large, faint, circular watermark logo is centered in the background. It features a five-pointed star in the center, with the words "KENTUCKY ASSOCIATION OF SEXUAL ASSAULT PROGRAMS" written in a circular path around it.
- ✓ File a mandatory report → this will trigger police/cabinet investigation and a referral to CAC
  - ✓ Explain that you are a mandatory reporter and that police are inevitably going to be involved. Does she want to call them with you?
  - ✓ Call RCC
  - ✓ Secure transportation to local ED for SAFE



<https://www.kasap.org/help-for-survivors/>

<https://www.kasap.org/help-for-survivors/>



1. Key Understanding: Every ED in KY must provide a SAFE when requested by a victim, whether or not a SANE is available.

## 216B.400 (2) Hospital ED shall have a medical professional available to do a SAFE at all times

- Every KY hospital which offers emergency services shall provide that a physician, a sexual assault nurse examiner,... or another qualified medical professional, ... is available on call twenty-four (24) hours each day for the examinations of persons seeking treatment as victims of sexual offenses as defined by KRS 510... 530... 531.310

# SANE-ready Hospitals

- <https://www.chfs.ky.gov/agencies/os/oig/dhc/Documents/SANEReadyHospitalDirectory.pdf>

**12-year-old Sally is having sex with a 17-year-old, she believes it is a consensual relationship. Her parents bring her into the clinic demanding that police be called and an exam performed. What do you advise?**

## 2. Key Understanding: Victim consent determines whether a SAFE is executed and whether a police report is made.

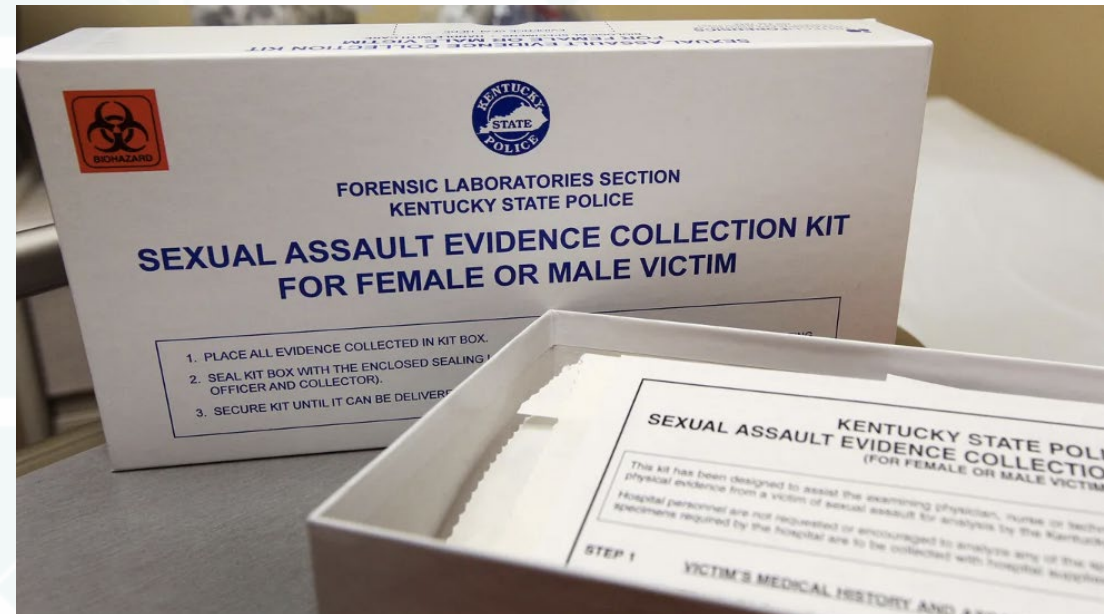
- [KRS 216B.400](#) = Requires victim consent prior to the execution of a sexual assault forensic exam + Victim decides whether to engage police/file a report + Minor victims may consent to exams and their consent is not subject to the disaffirmance of parents. Parental consent is not required.
- [502 KAR 12:010](#) = Documented consent is required prior to the execution of a sexual assault forensic exam + Victims may withdraw at anytime during the collection of forensic samples + Victim decides whether to report to police + Requires victim's authorization for release of information to police.



### 3. Key Understanding: SAFE is an *optional*/tool that may support a sexual assault investigation.

#### What is a SAFE kit? What is its purpose?

- **216B.400(4)** The physician shall... with the consent of the victim... examine such person for the purposes of
  - providing basic medical care relating to the incident and*
  - gathering samples that may be used as physical evidence.*
- Forensic tool distributed by KSP.
- Never release back to KSP without victim consent.
- Includes tracking number.



**VICTIM'S MEDICAL HISTORY AND ASSAULT INFORMATION**  
(Please print with a dark, ballpoint pen - press firmly)

1. Investigating Agency: \_\_\_\_\_ 2. Officer: \_\_\_\_\_
3. Victim's Name: \_\_\_\_\_ 5. Ethnicity: \_\_\_\_\_ 6. ☐ Male ☐ Female
4. Date of Birth: \_\_\_\_\_ : \_\_\_\_\_ AM / PM
7. Date and time of reported assault: \_\_\_\_ / \_\_\_\_ / 20 \_\_\_\_ : \_\_\_\_ AM / PM
8. Date and time of hospital examination: \_\_\_\_ / \_\_\_\_ / 20 \_\_\_\_ : \_\_\_\_ AM / PM
9. Examiner(s) (Print): \_\_\_\_\_
10. Between the assault and now, has the victim:
- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Douched         | <input type="checkbox"/> Defecated                | <input type="checkbox"/> Brushed teeth                                    |
| <input type="checkbox"/> Bathed/Showered | <input type="checkbox"/> Vomited                  | <input type="checkbox"/> Used Mouthwash                                   |
| <input type="checkbox"/> Urinated        | <input type="checkbox"/> Anything to Eat or Drink | <input type="checkbox"/> Changed Clothes / Underwear (circle one or both) |
| <input type="checkbox"/> Other: _____    |   |   |
11. Does victim remember and can communicate what happened to them during the assault?: ☐ Yes ☐ No If yes, consider a DFSA toxicology collection
12. Did the victim experience a loss of memory and/or consciousness? ☐ Yes ☐ No
13. Was a blood/urine toxicology kit collected? ☐ Yes ☐ No
14. Was there penetration of:
- |        |  |                                   |
|--------|--|-----------------------------------|
| Vagina | <input type="checkbox"/> Yes <input type="checkbox"/> No | Not Sure                          |
| Anus   | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Not Sure |
| Mouth  | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Not Sure |
15. Was there oral/genital contact:
- |   |  |                                   |
|---|--|-----------------------------------|
| Contact of victim's mouth to assailant's genitals | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Not Sure |
| Contact of assailant's mouth to victim's genitals | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Not Sure |
16. Did assailant penetrate orifice/with:
- |        |  |
|--------|--|
| Vagina | <input type="checkbox"/> penis <input type="checkbox"/> finger(s) <input type="checkbox"/> foreign object(s) |
| Anus   | <input type="checkbox"/> penis <input type="checkbox"/> finger(s) <input type="checkbox"/> foreign object(s) |
| Mouth  | <input type="checkbox"/> penis <input type="checkbox"/> finger(s) <input type="checkbox"/> foreign object(s) |
17. Did the assailant masturbate? ☐ Yes ☐ No ☐ Not Sure
18. Did ejaculation occur? ☐ Yes ☐ No ☐ Not Sure
- [If yes, note location(s):
- |                                 |  |                                       |
|---------------------------------|--|---------------------------------------|
| <input type="checkbox"/> vagina | <input type="checkbox"/> body surface    | <input type="checkbox"/> other: _____ |
| <input type="checkbox"/> anus   | <input type="checkbox"/> clothing: _____ |                                       |
| <input type="checkbox"/> mouth  | <input type="checkbox"/> bedding: _____  |                                       |
19. Did assailant use: ☐ Condom\* ☐ Lubricant\* ☐ Saliva as a lubricant \*Note brand/type if known: \_\_\_\_\_
20. Was victim menstruating at time of:
- |             |  |
|-------------|--|
| Assault     | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure |
| Examination | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure |
21. Any injuries to the victim resulting in bleeding?  
If yes, describe: \_\_\_\_\_
22. Any consensual sex or sex acts in the last week?  
If yes, Date: \_\_\_\_ / \_\_\_\_ / 20 \_\_\_\_ Time: \_\_\_\_ : \_\_\_\_ AM / PM ☐ Male ☐ Female
- Name: \_\_\_\_\_
- If yes, was condom used? ☐ Yes ☐ No
- If yes, what act(s)? ☐ Vaginal sex ☐ Victim's mouth to consensual partner's genitals ☐ With object
- ☐ Anal sex ☐ Consensual partner's mouth to victim's genitals
23. Were any of the following collected during the examination?  
☐ Tampon ☐ Sanitary Pad ☐ Panty Liner ☐ Diaper ☐ Condom ☐ Other: \_\_\_\_\_
24. Number of assailant(s)? \_\_\_\_\_ 25. Name(s) of assailant(s) if known: \_\_\_\_\_
26. Age of assailant(s): \_\_\_\_\_ 27. Ethnicity of assailant(s): \_\_\_\_\_
28. Assailant(s) relationship to victim (check all that apply):  
☐ Stranger ☐ Acquaintance ☐ Cohabitant ☐ Relative/Significant Other (specify): \_\_\_\_\_
29. Any injuries to assailant(s) resulting in bleeding? ☐ Yes ☐ No ☐ Not Sure  
If yes, describe: \_\_\_\_\_
30. Coercion used: ☐ Choked\*\* ☐ Knife ☐ Gun ☐ Physical Threats ☐ Verbal Threats ☐ Other: \_\_\_\_\_  
\*\*If manual strangulation, were neck swabs collected? ☐ Yes ☐ No
31. List of victim's clothing at the time of the assault: \_\_\_\_\_  
Were these items collected during the examination? ☐ Yes ☐ No
32. Victim's description of reported assault (use an additional sheet of paper if necessary and include a copy in kit/provide to investigating officer): \_\_\_\_\_

Hospital: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / 20 \_\_\_\_

Signature of Examiner: \_\_\_\_\_

## 4. Key Understanding: ED is required to contact RCC prior to a SAFE.

502 KAR 12:010 Section 2. Preforensic-Medical Examination Procedure. If a person seeking treatment as a victim arrives at an examination facility, the appropriate staff at the facility prior to conducting the forensic-medical examination SHALL COMPLY with the following requirements:

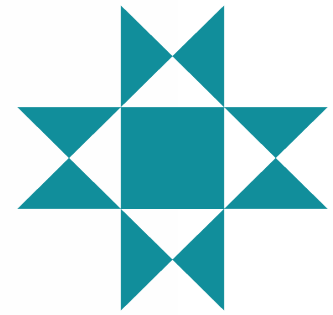
(1) Reporting to the Rape Crisis Center Advocate. The examination facility staff shall:

- (a) Contact the rape crisis center to inform the on call advocate that a victim has arrived at the examination facility for an examination; and
- (b) Upon arrival of the advocate, ask if the victim wishes to have a rape crisis center advocate present for the examination or otherwise available for consultation.



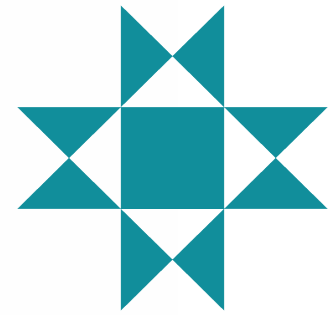
KENTUCKY ASSOCIATION  
OF SEXUAL ASSAULT  
PROGRAMS





14-year-old Sally comes to the clinic reporting that she was raped by her 18-year-old boyfriend. Mom insists that Sally get a SAFE but Sally does not want one. Sally secretly asks if she can get STI treatment and emergency contraception?

- Who decides if Sally gets a SAFE?
- Can you provide the treatment?



5. Key Understanding: Minor victims can consent to a SAFE on their own.

## 216B.400(7) Minor consent

- (7) Notwithstanding any other provision of law, a minor may consent to examination under this section. This consent is not subject to disaffirmance because of minority, and consent of the parents or guardians of the minor is not required for the examination.

6. Key Understanding: All victims are entitled to treatment for HIV, STI, pregnancy (not abortion), & emergency contraception.

\*regardless of whether the patient is a minor

\*regardless of whether parents are involved in the conversation

\*regardless of whether the victim wants a SAFE.

### 502 KAR 12:010(5)(f)

“ED staff shall... inform the victim of the need for a physical examination due to the risk of sexually transmitted infections, including HIV, pregnancy, injury, or other medical problems whether or not the victim chooses to have the evidence collected”

# KRS 214.185 Physician treatment of minors without parent consent.

Any physician, upon consultation by a minor as a patient, with the consent of such minor may make a diagnostic examination for

venereal disease

pregnancy

substance use disorder

and may advise, prescribe for, and treat such minor regarding

venereal disease

contraception, pregnancy, or childbirth

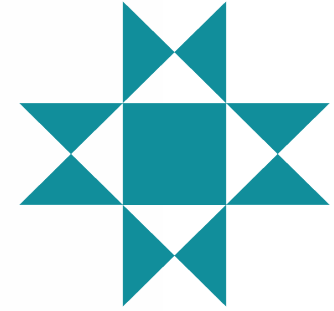
substance use disorder

**all without the consent of or notification to the parent.**

## KRS 214.185 Physician treatment of minors without parent consent.

- The professional may inform the parent or legal guardian of the minor patient of any treatment given or needed **where, in the judgment of the professional, informing the parent or guardian would benefit the health of the minor patient.**
- Treatment under this section does not include inducing of an abortion or performance of a sterilization operation.

## 216B.400(5-6) Victims have a statutory right to be informed of services available for treatment



- (5) Each victim shall be informed of available services for treatment of:
  - sexually transmitted infections \*includes whether the patient needs HIV prophylaxis,
  - Pregnancy \*limitations regarding abortion referral and counseling services
  - other medical and psychiatric problems
- (6) Each victim shall be informed of available crisis intervention or other mental health services provided by regional rape crisis centers providing services to victims of sexual assault

You may prescribe emergency contraception → [KRS 214.185](#)

- Because emergency contraception will not harm an existing pregnancy

## KRS 620.050(14)

# Medical evaluations in child abuse cases

- In child abuse cases – under KRS 620 medical professionals may collect photos, x-rays, and perform “other medical diagnostic procedures” without the consent of the parent or guardian

.



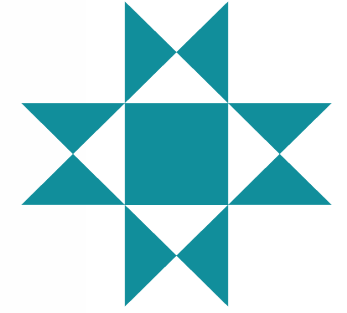
KENTUCKY ASSOCIATION  
OF SEXUAL ASSAULT  
PROGRAMS

**12-year-old Sally is having sex with a 17-year-old, she believes it is a consensual relationship. Her parents bring her into the clinic demanding that police be called and an exam performed. What do you advise?**



**12-year-old Sally's parents are very angry. They have called police and police appear with a search warrant for a SAFE. Sally is very opposed. What do you advise?**

7. Key Understanding: Police cannot force a victim to cooperate with a sexual assault investigation, nor undergo a SAFE.



KRS 216B law states: the execution of a SAFE exam is lawful upon victim consent... or at the request of officers or prosecutors, AND with victim consent

Reporting is optional. Sending a kit to the lab is optional. 502 KAR 12:010

Search warrants cannot serve as proxy for victim consent

## 8. Key Understanding: When you have a child victim, you are required to follow the “Kentucky Medical Protocol for Child Sexual Assault/Abuse Evaluation”

(2) If the reporting patient is a child, examination facility staff shall refer to the “Kentucky Medical Protocol for Child Sexual Assault/Abuse Evaluation” developed by the Sexual Assault Response Team Advisory Committee for guidance in conducting the forensic evidence exam.  
502 Ky. Admin. Regs. 12:010

<https://cackentucky.org/medical-resources/>

# Statewide protocol:

"A child should never be forced, restrained, or sedated for the sole purpose of evidence collection." For unconscious pubertal patients, evidence collection MUST be deferred until the patient is medically stable and able to provide consent. • For unconscious prepubertal patients, a legal custodian can provide informed consent. • In the event the caregiver is unable, unwilling, or not available to provide consent for a child who cannot otherwise consent themselves for the exam, consult the facility legal department (Refer to KRS 620.050). • If a child does not consent or assent to the collection of evidence, an evidence collection kit should not be obtained. A child should not be physically restrained for the sole purpose of evidence collection. When injury, infection, or other medical condition is suspected, sedation or anxiolytic may be considered. If there are questions regarding whether collection should be attempted, consultation with an expert is recommended. • If the patient's capacity to consent/assent changes (e.g. change in mental status, level of consciousness, or ability to give ongoing consent), stop evidence collection and address medical concerns. Reassess proceeding with evidence collection when appropriate. • If parent consents to the exam but the patient does not assent for evidence collection, then explore with the patient the reason for not proceeding and attempt to reconcile the issue. If reconciliation is unsuccessful, do not proceed with evidence collection.

# Consent to SAFE: Younger children and vulnerable or disabled adults

**Key question = Are they developmentally capable of consenting to the exam?**

- Consider the developmental and cognitive capacity of the child or vulnerable adult. \*obviously a 3 year old can't consent
- A child, **who is developmentally capable of consenting**, has authority to consent.
- A disabled or vulnerable adult, **who is developmentally capable of consenting**, has authority to consent.

# Unconscious patients – questions to consider

- Is this person going to regain consciousness soon?
- What do the next 96 hours look like?
- Would this person ordinarily have the mental capacity to consent?
- Is there a reliable, nonoffending caretaker or family member present?
- What is their position?
- What are internal hospital policies governing decision-making by a guardian?

## 9. Key Understanding: if the assault was within 96 hours, you shall utilize the SAFE

(3) If the sexual assault occurred within ninety-six (96) hours prior to the forensic-medical examination, a Kentucky State Police Sexual Assault Evidence Collection Kit shall be used.

502 Ky. Admin. Regs. 12:010 (section 3(3))



# If outside 96 hours...

(1) A physical examination may be conducted for basic treatment and to collect samples in all cases of sexual assault, regardless of the length of time that may have elapsed between the time of the assault and the examination itself.

502 Ky. Admin. Regs. 12:010 (section 3(1))





**15-year-old Sally reports that she was raped by her 16-year-old boyfriend, who her mom allows to live with them. She wants a SAFE but her mom does not.**

**What do you advise?**

**Is there a duty to report?**

**What if he did not live in the home?**

# 15-year-old Sally

- ✓ Call your local RCC
- ✓ File a mandatory report → this will trigger police/cabinet investigation and a referral to CAC
- ✓ Refer to local ED for SAFE. Know your local facilities that have SANEs
- ✓ Discuss options for transportation to the appropriate facility. Police transportation if police are called.
- ✓ File a mandatory report. This will trigger a CAC referral.
- ✓ SANE-ready hospitals

# Why is this a report?

1. perpetrator lives in the home
2. her mom may be “creating a risk” and neglect

# 15-year-old Sally

Sally goes to the local ED for a SAFE. Sally says she wants to hold off on pursuing criminal charges. She wants time to decide whether to move forward with police investigation. What happens to the kit?

**10. Key Understanding: Examination facilities are prohibited from releasing a kit without victim authorization. The facility must store unreported kits for up to one year and follow victim instruction on whether to destroy the kit.**

---

If the victim chooses to report and wants the kit released to LE, obtain and document the patient's informed consent to release information (including samples) to LE.

KIT TRACKING #: 502 KAR 12:010(3) *requires* entry into SAFE kit tracking portal

KIT TRACKING DATABASE KRS 16.132 <https://ksponline.ky.gov/safekit/>

Contact LE within 24 hours and turn over to LE

# Other ways to help support victims of sexual assault – get your SANE credential!

SANE training programs approved by KBN

<https://kbn.ky.gov/education/Pages/Approved-SANE-Training-Programs.aspx>

# For your reference...

- [KRS 216B.400](#) (SV response: hospital duties & victim rights)
- [502 KAR 12:010](#) (SAFE protocol, police involvement, victim rights)
- [902 KAR 20:012](#) (add'l mandates re access to SAFE)
- [201 KAR 20:411](#) (SANE credentialing and standards)
- [KRS 49.270 to 49.490](#) (Crime Victims Compensation)
- [802 KAR 3:020](#) (Sexual Assault Exam Program, CVC reimbursement)
- [KRS 216B.140](#) (Medical/diagnostic services mandate for minor victims of SV)
- [KRS 216B.400\(7\)](#) (Minor victim rights to SAFE without parent consent)
- [KRS 216B.400\(5\)](#) (Victim rights to STI treatment and care)
- [KRS 214.185](#) (Minor victim rights to STI and pregnancy care without parent consent)
- [502 KAR 12:010\(5\)\(f\)](#) (Victim rights to STI, HIV, pregnancy information and care)
- [2024 National Protocol for Sexual Assault Medical Forensic Examinations - Adult-Adolescent](#)
- [KY SANE-P Medical Protocol](#)