



*Training and Technical Assistance
Policy Guide*

THE FORENSIC MEDICAL EXAM

Commonly asked questions

Issue 1 of 3 part series

These materials were developed
by FCASV staff for the purpose of providing
advanced technical assistance to
certified rape crisis centers in Florida.

Theresa L. Prichard, Esq., Director of Advocacy and Legal Assistance to Victims Project *and*
Grace Frances, Director of Certification and Special Projectsⁱ

Florida Council Against Sexual Violence
1820 E. Park Ave. Suite 100
Tallahassee, FL 32301
850.297.2000 (tel)
850.297.2001 (fax)

Forensic medical exams are perhaps the most common request for assistance made by victims in the immediate aftermath of a sexual assault. The Florida Council Against Sexual Violence receives multiple questions each week regarding policies surrounding forensic exams. FCASV has prepared this document to answer some of the most common questions related to forensic medical exams and to respond to reports of practices throughout the state. This document is intended to be used as a guide only. Please contact Theresa Prichard directly at (850) 297-2000 or tprichard@fcasv.org with questions about a specific case or community. The information contained within this document is the legal opinion of FCASV, and should not be attributed to any other agency or organization.

A forensic medical exam is a medical procedure conducted for purposes of collecting evidence and coordinating the treatment of injuries and sexually transmitted infections related to a sexual assault. A forensic exam should not be conducted on an individual for purposes unrelated to collecting evidence pursuant to a sexual assault, such as to determine whether a child is sexually active.

CONSENT FOR FORENSIC EXAMS - Minors

Many medical providers express misconceptions surrounding the ability of minors to consent to forensic exams. Minors who have not been adjudicated as adults are unable to consent to forensic exams on their own. Forensic exam providers must obtain the written consent of a minor's parent or legal guardian prior to conducting a forensic exam. The forensic exam is a medical procedure, for purposes of collecting evidence, and, like any other medical procedure, parental consent is required.

Though parental consent is required to perform the procedure, you providers should never conduct an exam against the will of the victim, even if the victim is a minor. Responders should never touch a victim without their permission.ⁱⁱ This issue often arises in cases of a parent or guardian presenting a minor for an exam to determine if the minor is sexually active. To conduct an exam in such a case violates the minor's privacy in addition to being an inappropriate use of staff and hospital resources.

Forensic exam providers have expressed concerns about having to obtain consent from parents when a minor has reported the parent as the perpetrator of the sexual abuse. In those instances, FCASV advises contacting DCF (as required by law – see below) prior to conducting the exam, and reporting the situation to hotline staff. Depending on the facts of the case, DCF may assume temporary custody to consent for the exam absent parental consent.

However, certain minors may be exempt from this requirement of parental consent altogether. Minors who have had the disabilities of non-age removed by court order under F.S. 743.015 and married minors are exempt from this requirement, and may consent to any and all medical procedures on their behalves. Unwed pregnant minors may only consent to treatment for themselves related to their pregnancy or, later, for medical treatment of their child. Pregnancy and/or parenthood alone do not automatically confer the rights of adulthood upon minors.

Further, in 2014, the Florida legislature enacted an amendment to F.S. 743.067 permitting unaccompanied homeless youths to obtain medical treatment without parental consent provided certain conditions are met. To qualify as an unaccompanied homeless youth, the minor must be at least 16 years of age, and must obtain a certification on official agency letterhead of such status from one of the following: 1.) the director of an emergency shelter program funded by the United States Department of Housing and Urban Development; 2.) the director of a runaway or homeless youth basic center or transitional living program funded by the United States Department of Health and Human Services; 3.) a clinical social worker licensed; or 4.) a circuit court.

INFORMED CONSENTⁱⁱⁱ

In order to conduct a forensic exam on a presenting adult or teen victim, providers must obtain the informed consent of the victim, as with any other non-emergency medical procedure. Informed consent means that the victim was in a position to understand the procedure and any risks involved. A victim who is unconscious, under the influence of an intoxicating substance, heavily medicated, or under duress is not in a position to give informed consent. FCASV advises that written consent be obtained from the victim in order to protect the provider in the event of a dispute as to whether consent was obtained.

MANDATORY ABUSE REPORTING

Pursuant to F.S. 39.201, reports of sexual abuse of minors must be reported to the Department of Children and Families abuse hotline (1-800-96-ABUSE). If a minor reports for a forensic exam, medical staff is required by law to make a report as well as to provide their name and contact information to hotline operators. Similarly, sexual abuse of vulnerable adults must be reported to the abuse hotline as required in F.S. 415.1034.

PRIVACY

Victim privacy is another area of concern for forensic exam providers. Some communities report policies of law enforcement agencies or individual officers requiring they be allowed to remain in the room while an exam is performed, citing concerns over the chain of evidence. *This is a major violation of the victim's privacy and should be disallowed by medical staff who are required to maintain patient privacy rights.* Medical staff is capable of maintaining evidence for chain-of-custody purposes. Medical facilities and stand-alone forensic exam facilities who allow law enforcement to remain in the room, without the victim's *written* consent, are violating the victim's privacy rights.

FCASV advises rape crisis center staff to discuss concerns related to victim privacy issues with hospital administration. In addition, FCASV advises for the victim and/or advocate to report the activity to the Department of Health using the following form:

<http://www.floridahealth.gov/licensing-and-regulation/enforcement/documents/complaint-form-2015.pdf>

Keep in mind the Department does not have the authority to award any sort of compensation to patients—if a professional (RN, ARNP, or physician) is found to be in violation, they can face sanctions, reprimand, suspension, or the like, but the patient will not receive any award. The penalty would be assessed against the practitioner or possibly the facility in general if their policies are found to be in violation.

DENIAL OF FORENSIC EXAM

Some hospitals have refused to conduct forensic exams on victims, in which cases the victims have had to travel to another facility to obtain an exam. In addition to being a violation of state statute, this is an unacceptable practice. Under F.S. 395.1021, hospitals which provide emergency services are also required to provide medical treatment and evidence collection to victims of sexual assault, while maintaining victims' anonymity. Hospitals are also required to provide staff who are trained to provide medical and forensic services, though the statute does not specifically require staff to be SANE-trained.

Anyone can file a complaint with the Agency for Health Care Administration against a hospital that refuses to do a forensic exam at the following site:

<https://apps.ahca.myflorida.com/hcfc/>.

ⁱ Prepared with assistance from Terri Augsperger, MSN, RN, CFN, SANE-A, SANE-P, AFN-B/C, DABFN, DABFE, Clinical Forensic Nurse Examiner

ⁱⁱ See page 45, A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents, Second Edition (April 2013). Available at <https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf>.

ⁱⁱⁱ F.S. 766.103