

216B.400 Emergency care -- Examination services for victims of sexual offenses -- Examination expenses paid by Kentucky Claims Commission -- Reporting to law enforcement -- Examination samples as evidence.

- (1) Where a person has been determined to be in need of emergency care by any person with admitting authority, no such person shall be denied admission by reason only of his or her inability to pay for services to be rendered by the hospital.
- (2) Every hospital of this state which offers emergency services shall provide that a physician, a sexual assault nurse examiner, who shall be a registered nurse licensed in the Commonwealth and credentialed by the Kentucky Board of Nursing as provided under KRS 314.142, or another qualified medical professional, as defined by administrative regulation promulgated by the Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707, 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 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 510.120, 510.130, 510.140, 530.020, 530.064(1)(a), and 531.310.
- (3) An examination provided in accordance with this section of a victim of a sexual offense may be performed in a sexual assault examination facility as defined in KRS 216B.015. An examination under this section shall apply only to an examination of a victim.
- (4) The physician, sexual assault nurse examiner, or other qualified medical professional, acting under a statewide medical forensic protocol which shall be developed by the Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707, and promulgated by the secretary of justice and public safety pursuant to KRS Chapter 13A shall, upon the request of any peace officer or prosecuting attorney, and with the consent of the victim, or upon the request 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. This examination shall include but not be limited to:
 - (a) Basic treatment and sample gathering services; and
 - (b) Laboratory tests, as appropriate.
- (5) Each victim shall be informed of available services for treatment of sexually transmitted infections, pregnancy, and other medical and psychiatric problems. Pregnancy counseling shall not include abortion counseling or referral information.
- (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.
- (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.
- (8) (a) The examinations provided in accordance with this section shall be paid for by

the Kentucky Claims Commission at a rate to be determined by the administrative regulation promulgated by the board after consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707.

- (b) Upon receipt of a completed claim form supplied by the board and an itemized billing for a forensic sexual assault examination or related services that are within the scope of practice of the respective provider and were performed no more than twelve (12) months prior to submission of the form, the board shall reimburse the hospital or sexual assault examination facility, pharmacist, health department, physician, sexual assault nurse examiner, or other qualified medical professional as provided in administrative regulations promulgated by the board pursuant to KRS Chapter 13A. Reimbursement shall be made to an out-of-state nurse who is credentialed in the other state to provide sexual assault examinations, an out-of-state hospital, or an out-of-state physician if the sexual assault occurred in Kentucky.
 - (c) Independent investigation by the Kentucky Claims Commission shall not be required for payment of claims under this section; however, the board may require additional documentation or proof that the forensic medical examination was performed.
- (9) No charge shall be made to the victim for sexual assault examinations by the hospital, the sexual assault examination facility, the physician, the pharmacist, the health department, the sexual assault nurse examiner, other qualified medical professional, the victim's insurance carrier, or the Commonwealth.
- (10) (a) Each victim shall have the right to determine whether a report or other notification shall be made to law enforcement, except where reporting of abuse and neglect of a child or a vulnerable adult is required, as set forth in KRS 209.030 and 620.030. No victim shall be denied an examination because the victim chooses not to file a police report, cooperate with law enforcement, or otherwise participate in the criminal justice system.
- (b) If the victim chooses to report to law enforcement, the hospital shall notify law enforcement within twenty-four (24) hours.
 - (c)
 - 1. All samples collected during an exam where the victim has chosen not to immediately report to law enforcement shall be stored, released, and destroyed, if appropriate, in accordance with an administrative regulation promulgated by the Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707.
 - 2. Facilities collecting samples pursuant to this section may provide the required secure storage, sample destruction, and related activities, or may enter into agreements with other agencies qualified to do so, pursuant to administrative regulation.
 - 3. All samples collected pursuant to this section shall be stored for at least one (1) year from the date of collection in accordance with the administrative regulation promulgated pursuant to this subsection.

4. Notwithstanding KRS 524.140, samples collected during exams where the victim chose not to report immediately or file a report within one (1) year after collection may be destroyed as set forth in accordance with the administrative regulation promulgated pursuant to this subsection. The victim shall be informed of this process at the time of the examination. No hospital, sexual assault examination facility, or designated storage facility shall be liable for destruction of samples after the required storage period has expired.

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 191, sec. 14, effective June 29, 2017. -- Amended 2016 Ky. Acts ch. 58, sec. 4, effective April 8, 2016. -- Amended 2013 Ky. Acts ch. 69, sec. 1, effective June 25, 2013. -- Amended 2010 Ky. Acts ch. 101, sec. 1, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 85, sec. 250, effective June 26, 2007. -- Amended 2006 Ky. Acts ch. 182, sec. 57, effective July 12, 2006. -- Amended 2004 Ky. Acts ch. 73, sec. 2, effective April 6, 2004. -- Amended 2002 Ky. Acts ch. 20, sec. 1, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 142, sec. 6, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 260, sec. 1, effective July 15, 1996. -- Amended 1990 Ky. Acts ch. 274, sec. 1, effective July 13, 1990. -- Amended 1984 Ky. Acts ch. 175, sec. 1, effective July 13, 1984. -- Amended 1978 Ky. Acts ch. 368, sec. 1, effective June 17, 1978. -- Created 1974 Ky. Acts ch. 352, sec. 1(1).

Legislative Research Commission Note (4/5/2018). 2017 Ky. Acts ch. 74 confirmed Executive Order 2016-576, which reorganized part of the Public Protection Cabinet to combine the Board of Claims, the Board of Tax Appeals, and the Crime Victims' Compensation Board to form the Kentucky Claims Commission. References in this statute to the Crime Victims' Compensation Board should have been changed in that Act to conform, but were inadvertently omitted. The Reviser of Statutes has made the conforming corrections under the authority of KRS 7.136(2).

Legislative Research Commission Note (4/8/2016). 2016 Ky. Acts ch. 58, sec. 1 states: "All sexual assault examination kits collected pursuant to KRS 216B.400 prior to the effective date of this Act (April 8, 2016) which have not been subjected to serological or deoxyribonucleic acid testing shall be submitted to the Department of Kentucky State Police forensic laboratory by January 1, 2017. The Department of Kentucky State Police forensic laboratory shall collaborate with every Kentucky law enforcement and prosecutorial agency responsible for the collection, storage, and maintenance of sexual assault examination kits to develop a plan for the submission and testing of all such kits."

Legislative Research Commission Note (4/8/2016). 2016 Ky. Acts ch. 58, sec. 11 provided that that Act shall be known as the Sexual Assault Forensic Evidence (SAFE) Act of 2016. This statute was amended in Section 4 of that Act.

Formerly codified as KRS 216.453.