

2023 Kansas Statutes

65-448. Qualified persons at medical care facilities, child advocacy centers or other facilities to examine victims of sexual offenses, when; remedy for refusal; costs, storage and testing of sexual assault kits. (a) Upon the request of any law enforcement officer and with the written consent of the reported victim, or upon the request of the victim, any physician, a licensed physician assistant who has been specially trained in performing sexual assault evidence collection, or a registered professional nurse who has been specially trained in performing sexual assault evidence collection, if such physician, licensed physician assistant or registered nurse is on call or on duty at a:

- (1) (A) Medical care facility of this state, as defined by K.S.A. 65-425(h), and amendments thereto, shall examine persons who may be victims of sexual assault; or
- (B) child advocacy center of this state, as defined by K.S.A. 38-2227, and amendments thereto, or any other facility licensed or operated by a physician, physician assistant or registered nurse licensed pursuant to chapter 65 of the Kansas Statutes Annotated, and amendments thereto, may examine persons who may be victims of sexual assault.

(2) All examinations performed pursuant to paragraph (1), shall be conducted using Kansas bureau of investigation sexual assault evidence collection kits or similar kits approved by the Kansas bureau of investigation, for the purposes of gathering evidence of any such crime.

(b) If an examination takes place solely upon the request of the victim, the medical care facility, child advocacy center or other facility where the examination takes place shall not notify any law enforcement agency without the written consent of the victim, unless otherwise required by law.

(c) If the physician, licensed physician assistant or registered professional nurse refuses to perform an examination at a medical care facility pursuant to subsection (a) (1), the prosecuting attorney is hereby empowered to seek a mandatory injunction against such physician, licensed physician assistant or registered professional nurse to enforce the provisions of subsection (a)(1). Any refusal by a physician, licensed physician assistant or registered professional nurse to perform an examination which has been requested pursuant to subsection (a)(1) shall be reported by the county or district attorney to the state board of healing arts or the board of nursing, whichever is applicable, for appropriate disciplinary action.

(d) The Kansas bureau of investigation shall establish procedures for gathering evidence pursuant to this section.

(e) (1) The medical care facility, child advocacy center or other facility shall give written notice to the parent or guardian of a minor that such an examination has taken place, except when:

- (A) The medical care facility, child advocacy center or other facility has information that a parent, guardian or family or household member is the subject of a related criminal investigation; or
- (B) the physician, licensed physician assistant or registered professional nurse, after consultation with law enforcement, reasonably believes that the child will be harmed if such notice is given.

(2) A minor may consent to an examination under this section. Such consent is not subject to disaffirmance because of minority, and consent of a parent or guardian of the minor is not required for such examination.

(f) All unreported sexual assault kits shall be sealed by either the sexual assault nurse examiner program or the facility that provided the examination and sent to the Kansas bureau of investigation. The Kansas bureau of investigation shall retain all unreported sexual assault kits connected to a report of sexual assault in evidence storage for 20 years. After 20 years, such kits shall be destroyed by the Kansas bureau of investigation.

(g) Each sexual assault kit that is received by the Johnson county sheriff's office criminalistics laboratory, Sedgwick county regional forensic science center or the Kansas bureau of investigation shall be examined if the kit is required to be released to a law enforcement agency in connection with a report of sexual assault.

(h) The fee chargeable for conducting an examination of a victim as herein provided

shall be established by the department of health and environment. Such fee, including the cost of the sexual assault evidence collection kit, shall be charged to and paid by the county where the alleged offense was committed, and refusal of the victim to report the alleged offense to law enforcement shall not excuse or exempt the county from paying such fee. The fee for conducting an examination of a victim pursuant to this section shall not be charged or billed to the victim or to the victim's insurance carrier. Such county shall be reimbursed such fee upon the costs being paid by the defendant as court costs assessed pursuant to K.S.A. 28-172a, and amendments thereto.

(i) No medical care facility, child advocacy center or other facility shall incur any civil, administrative or criminal liability as a result of notifying or failing to notify any law enforcement agency if an examination has taken place solely upon the request of the victim and such notification is not otherwise required by law.

(j) The Kansas bureau of investigation may adopt rules and regulations as deemed necessary to implement the provisions of this section.

(k) As used in this section:

(1) "Unreported sexual assault kit" means a sexual assault kit collected pursuant to subsection (b) that is not released to law enforcement; and

(2) "sexual assault" means a sexual offense cognizable as a violation of K.S.A. 21-5503, 21-5504, 21-5506 or 21-5604, and amendments thereto.

History: L. 1977, ch. 210, § 1; L. 1994, ch. 348, § 9; L. 1996, ch. 156, § 1; L. 2002, ch. 128, § 2; L. 2008, ch. 157, § 1; L. 2011, ch. 30, § 234; L. 2017, ch. 66, § 12; L. 2022, ch. 40, § 3; July 1.