

## **IC 16-21-8**

### **Chapter 8. Emergency Services to Sex Crime Victims**

#### **IC 16-21-8-0.1**

##### **Repealed**

*(As added by P.L.41-2007, SEC.6. Repealed by P.L.161-2014, SEC.10.)*

#### **IC 16-21-8-0.2**

##### **Definitions**

Sec. 0.2. The following definitions apply throughout this chapter:

- (1) "Division" refers to the victim services division of the Indiana criminal justice institute established by IC 5-2-6-8(a).
- (2) "Evidence" means the results collected from a forensic medical examination of a victim by a provider.
- (3) "Provider" means a hospital or licensed medical services provider that provides forensic medical exams and additional forensic services to a victim.
- (4) "Sample" means the result collected from a forensic medical examination of the victim by a provider, when the victim has not yet reported the sex crime to law enforcement.
- (5) "Secured storage" means a method of storing a sample that will adequately safeguard the integrity and viability of the sample.
- (6) "Sexual assault examination kit" means the standard medical forensic examination kit for victims of sexual assault developed by the state police department under IC 10-11-2-33.
- (7) "Sexual assault nurse examiner" means a registered nurse who:
  - (A) has received training to provide comprehensive care to sexual assault survivors; and
  - (B) can:
    - (i) conduct a forensic medical examination; and
    - (ii) collect evidence from a sexual assault victim.

*As added by P.L.161-2014, SEC.11.*

#### **IC 16-21-8-0.3**

##### **Repealed**

*(As added by P.L.41-2007, SEC.7. Repealed by P.L.161-2014, SEC.12.)*

#### **IC 16-21-8-0.5**

##### **Repealed**

*(As added by P.L.90-2005, SEC.4. Amended by P.L.41-2007, SEC.8. Repealed by P.L.161-2014, SEC.13.)*

#### **IC 16-21-8-0.6**

##### **Repealed**

*(As added by P.L.90-2005, SEC.5. Amended by P.L.121-2006, SEC.22; P.L.41-2007, SEC.9. Repealed by P.L.161-2014, SEC.14.)*

**IC 16-21-8-0.7**

**Repealed**

*(As added by P.L.90-2005, SEC.6. Amended by P.L.41-2007, SEC.10. Repealed by P.L.161-2014, SEC.15.)*

**IC 16-21-8-0.8**

**Repealed**

*(As added by P.L.41-2007, SEC.11. Repealed by P.L.161-2014, SEC.16.)*

**IC 16-21-8-0.9**

**Repealed**

*(As added by P.L.41-2007, SEC.12. Repealed by P.L.161-2014, SEC.17.)*

**IC 16-21-8-1**

**Forensic medical exams and additional forensic services; rules; enumeration of sex crimes**

Sec. 1. (a) A hospital licensed under IC 16-21-2 that provides general medical and surgical hospital services shall provide forensic medical exams and additional forensic services to all alleged sex crime victims who apply for forensic medical exams and additional forensic services in relation to injuries or trauma resulting from the alleged sex crime. To the extent practicable, the hospital shall use a sexual assault examination kit to conduct forensic exams and provide forensic services. The provision of services may not be dependent on a victim's reporting to, or cooperating with, law enforcement.

(b) For the purposes of this chapter, the following crimes are considered sex crimes:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2) (repealed).
- (3) Child molesting (IC 35-42-4-3).
- (4) Vicarious sexual gratification (IC 35-42-4-5).
- (5) Sexual battery (IC 35-42-4-8).
- (6) Sexual misconduct with a minor (IC 35-42-4-9).
- (7) Child solicitation (IC 35-42-4-6).
- (8) Child seduction (IC 35-42-4-7).
- (9) Incest (IC 35-46-1-3).

(c) Payment for services under this section shall be processed in accordance with rules adopted by the victim services division of the Indiana criminal justice institute.

*As added by P.L.2-1993, SEC.4. Amended by P.L.47-1993, SEC.7; P.L.36-1997, SEC.7; P.L.121-2006, SEC.23; P.L.41-2007, SEC.13; P.L.158-2013, SEC.228; P.L.214-2013, SEC.15; P.L.161-2014, SEC.18.*

### **IC 16-21-8-1.1**

#### **Forensic medical examinations without consent of the examinee**

Sec. 1.1. (a) A provider may conduct a forensic medical examination without the consent of the person who is the subject of the examination, or the consent of another person authorized to give consent under IC 16-36-1-5, if the following conditions are met:

- (1) The person:
  - (A) does not have the capacity to provide informed consent under IC 16-36-1; and
  - (B) is, based on the medical opinion of the health care provider, incapable of providing consent within the time for evidence to be collected through a forensic medical examination.
- (2) The provider has a reasonable suspicion that the person may be the victim of a sex crime.
- (3) A person authorized to give consent under IC 16-36-1-5 is:
  - (A) not reasonably available; or
  - (B) the suspected perpetrator of the sex crime.

(b) A provider is immune from civil liability for conducting a forensic medical examination without consent in accordance with this section unless performance of the forensic medical examination constitutes gross negligence or willful or wanton misconduct.

*As added by P.L.161-2014, SEC.19.*

### **IC 16-21-8-1.5**

#### **Appointment of a sexual assault response team**

Sec. 1.5. If a sexual assault response team has not been established in a county, the prosecuting attorney shall appoint a sexual assault response team in that county, or the county shall join with one (1) or more other counties to create a regional team, to comply with duties assigned to sexual assault response teams under this chapter.

*As added by P.L.41-2007, SEC.14.*

### **IC 16-21-8-2**

#### **County or regional sexual assault response team; duties**

Sec. 2. (a) Each county or regional sexual assault response team shall develop a plan that establishes the protocol for sexual assault victim response and treatment, including the:

- (1) collection;
- (2) preservation;
- (3) secured storage; and
- (4) destruction;

of samples.

(b) The plan under subsection (a) shall address the following regarding an alleged sexual assault victim who is at least eighteen (18) years of age and who either reports a sexual assault or elects not to report a sexual assault to law enforcement:

- (1) The method of maintaining the confidentiality of the alleged sexual assault victim regarding the chain of custody and secured storage of a sample.
- (2) The development of a victim notification form that notifies an alleged sexual assault victim of his or her rights under the law.
- (3) How a victim will receive the victim notification form.
- (4) Identification of law enforcement agencies that will be responsible to transport samples.
- (5) Agreements between medical providers and law enforcement agencies to pick up and store samples.
- (6) Maintaining samples in secured storage.
- (7) Procedures to destroy a sample following applicable statute of limitations.

*As added by P.L.2-1993, SEC.4. Amended by P.L.121-2006, SEC.24; P.L.41-2007, SEC.15.*

#### **IC 16-21-8-3**

##### **Forensic medical exams and additional forensic services; consent**

Sec. 3. A physician or sexual assault nurse examiner who provides forensic medical exams and additional forensic services shall provide the forensic medical exams and additional forensic services to an alleged sex crime victim under this chapter with the consent of the alleged sex crime victim.

*As added by P.L.2-1993, SEC.4. Amended by P.L.121-2006, SEC.25; P.L.41-2007, SEC.16.*

#### **IC 16-21-8-4**

##### **Assistance in development and operation of forensic medical exams and additional forensic services**

Sec. 4. The victim services division of the Indiana criminal justice institute shall assist in the development and operation of programs that provide forensic medical exams and additional forensic services to alleged sex crime victims, and if necessary, provide grants to hospitals for this purpose.

*As added by P.L.2-1993, SEC.4. Amended by P.L.47-1993, SEC.8; P.L.121-2006, SEC.26.*

#### **IC 16-21-8-5**

##### **Payment of forensic medical exams; requirements; suspension**

Sec. 5. (a) The division shall award compensation or reimbursement under this chapter for forensic medical exams.

(b) The division is not required to award compensation or reimbursement under this chapter for additional forensic services unless the following conditions are met:

- (1) The victim is at least eighteen (18) years of age.
- (2) If the victim is less than eighteen (18) years of age, a report of the sex crime must be made to child protective services or a

law enforcement officer.

(3) The sex crime occurred in Indiana.

If the division finds a compelling reason for failure to comply with the requirements of this section, the division may suspend the requirements of this section.

(c) A claim filed for services provided at a time before the provision of the forensic medical exams and additional forensic services for which an application for reimbursement is filed is not covered under this chapter.

*As added by P.L.2-1993, SEC.4. Amended by P.L.47-1993, SEC.9; P.L.90-2005, SEC.7; P.L.121-2006, SEC.27; P.L.41-2007, SEC.17.*

#### **IC 16-21-8-6**

##### **Services without charge; reimbursement**

Sec. 6. (a) When a provider provides forensic medical exams and additional forensic services under this chapter to a victim, the provider shall furnish the services without charge.

(b) When a provider provides additional forensic services under section 5(b) and 5(c) of this chapter, the provider shall furnish the services without charge.

(c) The division shall reimburse a provider for the cost for providing services and shall adopt rules and procedures to provide for reimbursement.

(d) The application for reimbursement must be filed not more than one hundred eighty (180) days after the date the service was provided.

(e) The division shall approve or deny an application for reimbursement filed under subsection (b) not more than one hundred twenty (120) days after receipt of the application for reimbursement.

(f) A provider may not charge the victim for services required under this chapter despite delays in reimbursement from the division.  
*As added by P.L.2-1993, SEC.4. Amended by P.L.47-1993, SEC.10; P.L.36-1997, SEC.8; P.L.90-2005, SEC.8; P.L.121-2006, SEC.28.*

#### **IC 16-21-8-7**

##### **Abortion services not required**

Sec. 7. This chapter does not require a hospital to provide a service related to an abortion.

*As added by P.L.2-1993, SEC.4.*

#### **IC 16-21-8-9**

##### **Duties of a provider; delayed implementation**

Sec. 9. (a) Prior to the discharge of a victim from the hospital, a provider shall:

- (1) require the victim to sign a form that notifies the victim of his or her rights under this chapter;
- (2) provide a copy of the signed form to the victim; and
- (3) inform law enforcement that the sample is available.

(b) The director of the Indiana criminal justice institute may delay the implementation of this section until the earlier of the following:

- (1) A date set by the director.
- (2) The date funding becomes available by a grant through the criminal justice institute or by an appropriation from the general assembly.

If the director of the criminal justice institute delays implementation of this section, the director shall notify the prosecuting attorney of each county of the director's action and when funding become available to implement this section.

*As added by P.L.41-2007, SEC.18.*

### **IC 16-21-8-10**

#### **Law enforcement duty to transport a sample to secured storage; victim notification; county plans**

Sec. 10. (a) Law enforcement shall:

- (1) obtain the sample within forty-eight (48) hours after receiving a provider's notification; and
- (2) transport the sample to secured storage.

(b) Law enforcement shall keep the sample in secured storage until the earlier of the following:

- (1) At least one (1) year after the date the sample is placed in secured storage.
- (2) The victim reports the sex crime to law enforcement and the sample is transported to the crime lab for investigation and use as evidence.

(c) The division shall notify the victim, as described in subsection (d), that the victim's sample will be removed from secured storage and may be destroyed if the victim does not report the sex crime to law enforcement on or before the date described in subsection (b)(1).

(d) The notice the division is required to provide a victim under subsection (c) shall be sent:

- (1) by first class mail to the individual's last known address;
- (2) by electronic mail to the individual's last known electronic mail address; and
- (3) six (6) months and thirty (30) days before the date described in subsection (b)(1).

(e) Each county shall develop and implement a plan for the secured storage of samples.

(f) The director of the Indiana criminal justice institute may delay the implementation of this section until the earlier of the following:

- (1) A date set by the director.
- (2) The date funding becomes available by a grant through the criminal justice institute or by an appropriation from the general assembly.

If the director of the criminal justice institute delays implementation of this section, the director shall notify the prosecuting attorney of each county of the director's action and when funding becomes

available to implement this section.

(g) The failure to comply with:

(1) this chapter;

(2) a plan adopted by a county; or

(3) a protocol adopted by a sexual assault response team;

does not, standing alone, affect the admissibility of a sample as evidence in a criminal or civil proceeding.

*As added by P.L.41-2007, SEC.19.*