

New Procedures for Sexual Assault and Physical Evidence Recovery Kit (PERK) Examinations of Incapacitated Adults: Guidance Document

Addendum to Virginia's Healthcare Response to Sexual Assault: Guidelines for the Acute Care of Adult and Post-Pubertal Adolescent Sexual Assault Patients

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Sexual Assault Examination and Physical Evidence Recovery Kit (PERK) Examinations on Incapacitated Adults

Effective July 1, 2013, Virginia legislation provides a procedure health care providers may use to evaluate incapacitated patients who may have been sexually assaulted (see § 54.1-2970.1 below). The legislation is intended to be used when a sexual assault examination and physical evidence recovery is prudent, but the adult patient is unable to consent and timeliness of evidence collection is crucial prior to destruction by medical interventions or bodily functions. This new consent process outlines specific procedures and criteria that must be met in order to allow the examination and evidence recovery without the patient's consent. It is expected that the new consent process will be infrequently used, as consent for the sexual assault examination and physical evidence recovery may be obtained from next of kin, guardians, or from the patient after the patient regains the capacity to consent following temporary incapacity.

Background

Sexual assault is a frequent crime, with an estimated lifetime prevalence of 27% for women in Virginia. (Mashow SW, et al., *Womens Health Issues*. 2005 Jul-Aug;15(4):157-66.) Evidence collection includes both physical examination to document injuries or disease, and physical evidence recovery to retain trace evidence and body fluids. This examination and collection of evidence does not directly affect the diagnosis and treatment of medical conditions, and therefore requires a separate informed consent from usual medical or emergency medical care.

Persons who have been sexually assaulted may request a forensic examination prior to and without being required to submit a report to law enforcement. The Violence Against Women Act provides for reimbursement to sexual assault examiners without requiring the patient to cooperate with a criminal prosecution. Prior to this legislation, healthcare providers did not have a process for recovering and preserving evidence for incapacitated patients unless they contacted law enforcement without patient consent or knowledge. Patients must retain autonomy to decide whether or not to seek the investigation and/or prosecution of a sexual assault. A patient's initial incapacity to consent for an examination and collection of evidence should not require law enforcement involvement nor prevent access to potentially critical evidence for future prosecution. In essence this legislation provides a process for collection of evidence prior to the patient regaining the capacity to determine whether or not to engage the criminal justice system, thus preserving that option for the patient.

The new consent process permits treating healthcare providers to assess the patient's incapacity to provide informed consent, and assess the circumstances of the presentation for healthcare, to determine if a forensic examination is warranted. This procedure permits this assessment and evaluation to occur entirely within the healthcare realm, obviating any need to contact law enforcement until the patient or the patient's next of kin affirm the desire to contact law enforcement.

The new process applies only to adults; it does not address issues related to consent for minors.

The New Process

A licensed physician, physician assistant, nurse practitioner, or registered nurse may perform a physical evidence recovery kit (PERK) examination for an adult patient who is believed to be the victim of a sexual assault and who is incapable of making an informed decision regarding consent to such examination when:

1. There is a need to conduct the examination before the victim is likely to be able to make an informed decision in order to preserve physical evidence of the alleged sexual assault;
2. No next of kin or other person authorized to consent to medical treatment for the individual is reasonably available to provide consent within the time necessary to preserve physical evidence of the alleged sexual assault; and
3. A capacity reviewer (licensed physician or clinical psychologist qualified by training or experience to assess decision-making capacity) certifies in writing that, based upon a personal examination of the individual, the individual is incapable of making an informed decision regarding the PERK examination and that, given the totality of the circumstances, the examination should be performed. The capacity reviewer who provides such written certification shall not be otherwise currently involved in the treatment of the person assessed, unless such an “independent” capacity reviewer is not reasonably available.

Any PERK examination performed pursuant to this section shall be performed in accordance with the requirements of § 19.2-11.2 and § 19.2-165.1 governing protection of patient information and payment of medical fees (see “Virginia Statutes” below) and shall protect the alleged victim's identity.

A licensed physician, physician assistant, nurse practitioner, or registered nurse who exercises due care in following the new procedure will not be liable for any act or omission related to performance of an examination.

Patient Care Considerations

The new process is intended to provide an option for the patient who initially cannot provide consent, where timeliness of evidence collection is crucial prior to degradation or destruction by medical interventions or bodily functions. Evidence can thus be collected prior to it being lost or destroyed by medical treatment or care. When the patient subsequently regains decision-making capacity, the patient can decide what should be done with evidence that was collected.

A variety of patients may present for medical care after a sexual assault, including patients who are incapacitated because of the following conditions:

- Disease, illness, trauma, or intoxication
- Unconsciousness
- Dementia or delirium
- Other mental or physical disorder that precludes communication or impairs judgment

Incapacity cannot be based solely upon a particular diagnosis, for example, alcohol intoxication. The duration of incapacity may be temporary, permanent, or unknown. Healthcare providers must assess the circumstances to determine the probable length of the incapacitation and whether the patient may regain capacity to make their own decision regarding a forensic examination. If the acute health crisis can be treated, and the patient is expected to regain capacity to make an informed decision about the forensic examination, then the forensic examination should be deferred until the patient regains capacity to consent to the exam.

The most important initial care for the patient presenting with an emergency medical condition is treatment and stabilization of the emergency medical condition. Treatment of the patient may destroy potential evidence of the assault. Forensic evidence collection should always be a secondary consideration until the patient is stabilized and primary emergency medical treatment has begun. These patients require comprehensive physical examinations as well as all medically necessary evaluations or laboratory assessments.

The patient population most likely to fall within the provisions of the new process would be patients presenting for emergency care, or patients admitted to a critical care unit of a hospital. Sexual assault may be alleged by the patient or suspected based on the circumstances of the patient's presentation. The forensic examination should not be performed if there is not a reasonable belief that a sexual assault has occurred. The Physical Evidence Recovery Kit examination is a specific forensic aspect of care that should not be performed "just in case."

Some patients may be uncooperative during their acute medical care. These "protesting patients" may also present with circumstances or findings indicating a possible sexual assault. Forensic examination of an uncooperative or combative patient presents risks to both the patient and healthcare staff that must be weighed against the benefits of forensic examination. Specific guidance is beyond the scope of this document; the healthcare providers must consider the risks and benefits, the applicability of regulations and standards of care. Advice from legal

counsel, ethics consultants, or other consultants may be needed to determine the appropriateness of forensic examination and the use of sedation or restraint to enable such examination.

Sexually abused /assaulted elders. Healthcare providers are mandated reporters of suspected elder abuse, which includes incapacitated adults. Adult Protective Services is the investigating agency for abuse of elders. If the healthcare provider has reason to suspect sexual or physical abuse or neglect of an incapacitated adult, then the healthcare provider is required to contact investigatory authorities. Healthcare providers must still follow existing protocols and procedures for engaging Adult Protective Services. APS cannot, however, authorize a forensic examination without the consent of the patient or family. This new consent process provides an additional option in the care of the patient if circumstances warrant. For the incapacitated adult, the new process may be used to conduct Physical Evidence Recovery Kit examination if sexual abuse or assault is suspected. In addition, photographs and imaging studies may be obtained without patient or caregiver consent in cases of suspected physical abuse or neglect of incapacitated adults (see § 63.2-1606.1). Injuries caused by specific weapons listed in state law (§ 18.2-308) must also be reported to law enforcement regardless of the patient's consent.

Obtaining Consent to Collect Evidence

The new process provides a method to document the patient's inability to consent to an examination and collection of evidence deemed "necessary to preserve physical evidence of the alleged sexual assault." When possible, consent should still be obtained directly from the patient or the patient's next of kin or other authorized decision-maker if the patient cannot consent due to incapacity. When the patient is unable to consent due to incapacity, and next of kin is unreachable in a timely fashion, the new process provides an immediately available method to document incapacity and the urgent need for a forensic examination and evidence collection. If consent cannot be obtained from the patient or authorized decision-maker or if the new process cannot be used, then providers may seek a search warrant or court order.

Capacity Review

- The capacity review is similar to that undertaken by healthcare providers to decide if a patient has the capacity to make other informed decisions (e.g., surgery, medical treatment, leaving against medical advice). The patient's capacity to make an informed decision must be assessed in an objective manner.
- The capacity reviewer must be a licensed physician or clinical psychologist. The capacity reviewer should not be currently involved in the medical care of the patient unless such independent reviewer is not reasonably available. In some emergency departments, a limited number of physicians may be available. The new consent process allows for the treating physician to also be the capacity reviewer, but the reason for not having an independent reviewer should be clearly documented.
- The patient is presumed to be able to provide consent unless determined not to be able to consent.
- No patient can be deemed incapacitated based solely upon a particular diagnosis, for example, alcohol intoxication.
- The capacity reviewer may be any physician but particularly emergency physicians, trauma physicians, and critical care physicians are trained and suited to perform capacity assessments.

Storage and Preservation of Evidence

- Once the PERK evidence is collected, the forensic program should use the same system currently used in the jurisdiction to store PERKs for “unreported” cases, i.e., not reported to law enforcement.
- PERKs collected under the new process should be considered “unreported” cases until the patient regains the capacity to make a decision about reporting to law enforcement.
- Confidentiality of the patient must be maintained until the patient is able to make a decision about reporting to law enforcement, just as in other unreported cases.

Documentation

The healthcare provider must document the decision to perform a forensic sexual assault examination without the patient’s consent. The documentation should contain specific findings on the reasons for the suspicion of a sexual assault or abuse, the reason for the patient’s incapacity to consent, the attempts made to contact next of kin, and the need for emergent or urgent examination prior to the patient regaining the capacity to consent. The capacity reviewer’s note must contain the specific examination findings which support the determination that the patient is incapable of making an informed decision.

Sample Note:

Ms. Smith is a 30 year old woman brought in by EMS after being found unconscious behind an apartment building. The events leading up to her unconsciousness are unknown. She was found naked from the waist down, other than a single white sock. EMS noted blood in her mouth and she was intubated at the scene. Subsequent studies in the ED showed a severe acidosis consistent with anoxic injury, as well as markings on her neck and petechiae of her face suggestive of strangulation. A head CT has shown diffuse cerebral edema but no hemorrhage. She has bruising on her thighs, bite marks on her thighs, and bleeding from her anus. Her other medical history is unknown. Her identification was made by a neighbor who heard the sirens. She has no family in the area and no family has been contacted yet despite multiple phone calls.

Her neurological examination reveals an intubated patient who received midazolam one hour ago. She has corneal reflexes, a gag reflex, some agonal breathing above the ventilator. She is unresponsive to pain and verbal stimulation.

Based upon her current neurological condition she is unable to consent to a forensic sexual assault examination. Her CT scan shows a serious edema and her presentation suggests she suffered a critical and possibly permanent anoxic injury. No contact with next of kin has been obtained despite multiple attempts using phone numbers provided by friends, review of prior hospital visits, and contact with law enforcement. The circumstances that she was found in strongly suggest she suffered a physical assault and likely a sexual assault (injuries to inner thighs, bites, and anal bleeding). DNA evidence from bite wounds and from anal and vaginal examination may become destroyed by therapeutic interventions and bodily functions prior to this patient regaining capacity to consent or before next of kin are contacted. A forensic sexual assault examination should be obtained on an urgent basis. Based upon the patient's incapacity to consent and no other person being reachable as next of kin, consent is provided for the SANE examination under VA Code § 54.1-2970.1.

Signed, Dr. R.E.Thomas

Virginia Statutes

§ 54.1-2970.1. Individual incapable of making informed decision; procedure for physical evidence recovery kit examination.

A. A licensed physician, physician assistant, nurse practitioner, or registered nurse may perform a physical evidence recovery kit examination for a person who is believed to be the victim of a sexual assault and who is incapable of making an informed decision regarding consent to such examination when:

1. There is a need to conduct the examination before the victim is likely to be able to make an informed decision in order to preserve physical evidence of the alleged sexual assault from degradation;
2. No legally authorized representative or other person authorized to consent to medical treatment on the individual's behalf is reasonably available to provide consent within the time necessary to preserve physical evidence of the alleged sexual assault; and
3. A capacity reviewer, as defined in § 54.1-2982, provides written certification that, based upon a personal examination of the individual, the individual is incapable of making an informed decision regarding the physical evidence recovery kit examination and that, given the totality of the circumstances, the examination should be performed. The capacity reviewer who provides such written certification shall not be otherwise currently involved in the treatment of the person assessed, unless an independent capacity reviewer is not reasonably available.

B. Any physical evidence recovery kit examination performed pursuant to this section shall be performed in accordance with the requirements of §§ 19.2-11.2 and 19.2-165.1 and shall protect the alleged victim's identity.

C. A licensed physician, physician assistant, nurse practitioner, or registered nurse who exercises due care under the provisions of this act shall not be liable for any act or omission related to performance of an examination in accordance with this section.

(2013, cc. 441, 532.)

§ 54.1-2982. Definitions.

As used in this article:

"Advance directive" means (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983.

"Agent" means an adult appointed by the declarant under an advance directive, executed or made in accordance with the provisions of § 54.1-2983, to make health care decisions for him. The declarant may also appoint an adult to make, after the declarant's death, an anatomical gift of all or any part of his body pursuant to Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1.

"Attending physician" means the primary physician who has responsibility for the health care of the patient.

"Capacity reviewer" means a licensed physician or clinical psychologist who is qualified by training or experience to assess whether a person is capable or incapable of making an informed decision.

"Declarant" means an adult who makes an advance directive, as defined in this article, while capable of making and communicating an informed decision.

"Durable Do Not Resuscitate Order" means a written physician's order issued pursuant to § 54.1-2987.1 to withhold cardiopulmonary resuscitation from a particular patient in the event of cardiac or respiratory arrest. For purposes of this article, cardiopulmonary resuscitation shall include cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, and defibrillation and related procedures. As the terms "advance directive" and "Durable Do Not Resuscitate Order" are used in this article, a Durable Do Not Resuscitate Order is not and shall not be construed as an advance directive.

"Health care" means the furnishing of services to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury or physical disability, including but not limited to, medications; surgery; blood transfusions; chemotherapy; radiation therapy; admission to a hospital, nursing home, assisted living facility, or other health care facility; psychiatric or other mental health treatment; and life-prolonging procedures and palliative care.

"Incapable of making an informed decision" means the inability of an adult patient, because of mental illness, intellectual disability, or any other mental or physical disorder that precludes communication or impairs judgment, to make an informed decision about providing, continuing, withholding or withdrawing a specific health care treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed health care decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise mentally competent and able to communicate by means other than speech, shall not be considered incapable of making an informed decision.

"Life-prolonging procedure" means any medical procedure, treatment or intervention which (i) utilizes mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, or is otherwise of such a nature as to afford a patient no reasonable expectation of recovery from a terminal condition and (ii) when applied to a patient in a terminal condition, would serve only to prolong the dying process. The term includes artificially administered hydration and nutrition. However, nothing in this act shall prohibit the administration of medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain, including the administration of pain relieving medications in excess of recommended dosages in accordance with §§ 54.1-2971.01 and 54.1-3408.1. For purposes of §§ 54.1-2988, 54.1-2989, and 54.1-2991, the term also shall include cardiopulmonary resuscitation.

"Patient care consulting committee" means a committee duly organized by a facility licensed to provide health care under Title 32.1 or Title 37.2, or a hospital or nursing home as defined in § 32.1-123 owned or operated by an agency of the Commonwealth that is exempt from licensure pursuant to § 32.1-124, to consult on health care issues only as authorized in this article. Each patient care consulting committee shall consist of five individuals, including at least one physician, one person licensed or holding a multistate licensure privilege under Chapter 30 (§ 54.1-3000 et seq.) to practice professional nursing, and one individual responsible for the provision of social services to patients of the facility. At least one committee member shall have experience in clinical ethics and at least two committee members shall have no employment or contractual relationship with the facility or any involvement in the management, operations, or governance of the facility, other than serving on the patient care consulting committee. A patient care consulting committee may be organized as a subcommittee of a standing ethics or other committee established by the facility or may be a separate and distinct committee. Four members of the patient care consulting committee shall constitute a quorum of the patient care consulting committee.

"Persistent vegetative state" means a condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness, with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner, other than reflex activity of muscles and nerves for low level conditioned response, and from which, to a reasonable degree of medical probability, there can be no recovery.

"Physician" means a person licensed to practice medicine in the Commonwealth of Virginia or in the jurisdiction where the health care is to be rendered or withheld.

"Terminal condition" means a condition caused by injury, disease or illness from which, to a reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent or (ii) the patient is in a persistent vegetative state.

"Witness" means any person over the age of 18, including a spouse or blood relative of the declarant. Employees of health care facilities and physician's offices, who act in good faith, shall be permitted to serve as witnesses for purposes of this article.

(1983, c. 532, § 54-325.8:2; 1984, c. 79; 1988, c. 765; 1991, c. 583; 1992, cc. 412, 748, 772; 1994, c. 956; 1997, c. 609; 1998, cc. 630, 803, 854; 1999, c. 814; 2000, c. 1034; 2005, c. 186; 2007, cc. 92, 907; 2009, cc. 211, 268; 2010, c. 792; 2012, cc. 476, 507.)

§ 63.2-1606. Protection of aged or incapacitated adults; mandated and voluntary reporting.

A. Matters giving reason to suspect the abuse, neglect or exploitation of adults shall be reported immediately upon the reporting person's determination that there is such reason to suspect. Medical facilities inspectors of the Department of Health are exempt from reporting suspected abuse immediately while conducting federal inspection surveys in accordance with § 1864 of Title XVIII and Title XIX of the Social Security Act, as amended, of certified nursing facilities as defined in § 32.1-123. Reports shall be made to the local department or the adult protective services hotline in accordance with requirements of this section by the following persons acting in their professional capacity:

1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503, with the exception of persons licensed by the Board of Veterinary Medicine;
2. Any mental health services provider as defined in § 54.1-2400.1;
3. Any emergency medical services provider certified by the Board of Health pursuant to §32.1-111.5, unless such provider immediately reports the suspected abuse, neglect or exploitation directly to the attending physician at the hospital to which the adult is transported, who shall make such report forthwith;
4. Any guardian or conservator of an adult;
5. Any person employed by or contracted with a public or private agency or facility and working with adults in an administrative, supportive or direct care capacity;
6. Any person providing full, intermittent or occasional care to an adult for compensation, including, but not limited to, companion, chore, homemaker, and personal care workers; and
7. Any law-enforcement officer.

B. The report shall be made in accordance with subsection A to the local department of the county or city wherein the adult resides or wherein the adult abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline. Nothing in this section shall be construed to eliminate or supersede any other obligation to report as required by law. If a person required to report under this section receives information regarding abuse, neglect or exploitation while providing professional services in a hospital, nursing facility or similar institution, then he may, in lieu of reporting, notify the person in charge of the institution or his designee, who shall report such information, in accordance with the institution's policies and procedures for reporting such matters, immediately upon his determination that there is reason to suspect abuse, neglect or exploitation. Any person required to make the report or notification required by this subsection shall do so either orally or in writing and shall disclose all information that is the basis for the suspicion of adult abuse, neglect or exploitation. Upon request, any person required to make the report shall make available to the adult protective services worker and the local department investigating the reported case of adult abuse, neglect or exploitation any information, records or reports which document the basis for the report. All persons required to report suspected adult abuse, neglect or exploitation shall cooperate with the investigating adult protective services worker of a local department and shall make information, records and reports which are relevant to the investigation available to such worker to the extent permitted by state and federal law. Criminal investigative reports received from law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be subject to public disclosure; such reports may, however, be disclosed to the Adult Fatality Review Team as provided in § 32.1-283.5 and, if reviewed by the Team, shall be subject to all of the Team's confidentiality requirements.

C. Any financial institution staff who suspects that an adult has been exploited financially may report such suspected exploitation to the local department of the county or city wherein the adult resides or wherein the exploitation is believed to have occurred or to the adult protective

services hotline. For purposes of this section, financial institution staff means any employee of a bank, savings institution, credit union, securities firm, accounting firm, or insurance company.

D. Any person other than those specified in subsection A who suspects that an adult is an abused, neglected or exploited adult may report the matter to the local department of the county or city wherein the adult resides or wherein the abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline.

E. Any person who makes a report or provides records or information pursuant to subsection A, C, or D, or who testifies in any judicial proceeding arising from such report, records or information, or who takes or causes to be taken with the adult's or the adult's legal representative's informed consent photographs, video recordings, or appropriate medical imaging of the adult who is subject of a report shall be immune from any civil or criminal liability on account of such report, records, information, photographs, video recordings, appropriate medical imaging or testimony, unless such person acted in bad faith or with a malicious purpose.

F. An employer of a mandated reporter shall not prohibit a mandated reporter from reporting directly to the local department or to the adult protective services hotline. Employers whose employees are mandated reporters shall notify employees upon hiring of the requirement to report.

G. Any person 14 years of age or older who makes or causes to be made a report of adult abuse, neglect, or exploitation that he knows to be false shall be guilty of a Class 4 misdemeanor. Any subsequent conviction of this provision shall be a Class 2 misdemeanor.

H. Any person who fails to make a required report or notification pursuant to subsection A shall be subject to a civil penalty of not more than \$500 for the first failure and not less than \$100 nor more than \$1,000 for any subsequent failures. Civil penalties under subdivision A 7 shall be determined by a court of competent jurisdiction, in its discretion. All other civil penalties under this section shall be determined by the Commissioner for Aging and Rehabilitative Services or his designee. The Commissioner for Aging and Rehabilitative Services shall establish by regulation a process for imposing and collecting civil penalties, and a process for appeal of the imposition of such penalty pursuant to § 2.2-4026 of the Administrative Process Act.

I. Any mandated reporter who has reasonable cause to suspect that an adult died as a result of abuse or neglect shall immediately report such suspicion to the appropriate medical examiner and to the appropriate law-enforcement agency, notwithstanding the existence of a death certificate signed by a licensed physician. The medical examiner and the law-enforcement agency shall receive the report and determine if an investigation is warranted. The medical examiner may order an autopsy. If an autopsy is conducted, the medical examiner shall report the findings to law enforcement, as appropriate, and to the local department or to the adult protective services hotline.

J. No person or entity shall be obligated to report any matter if the person or entity has actual knowledge that the same matter has already been reported to the local department or to the adult protective services hotline.

K. All law-enforcement departments and other state and local departments, agencies, authorities and institutions shall cooperate with each adult protective services worker of a local department in the detection, investigation and prevention of adult abuse, neglect and exploitation.

(1977, c. 547, § 63.1-55.3; 1984, c. 628; 1986, cc. 448, 487; 1990, c. 308; 1991, c. 33; 1994, c. 891; 1997, c. 687; 1999, c. 749; 2001, c. 191; 2002, c. 747; 2004, cc. 749, 1011; 2008, c. 539; 2009, c. 538; 2012, cc. 803, 835; 2013, cc. 72, 331.)

§ 63.2-1606.1. Photographs, X-rays and medical imaging of incapacitated persons; use as evidence.

In any case of suspected abuse of an incapacitated person, photographs, X-rays and appropriate medical imaging of such incapacitated person may be taken as a part of the medical evaluation without the consent of the person responsible for the incapacitated person. Such images shall not be used in lieu of medical evaluation.

Such photographs, X-rays and medical imaging may be introduced into evidence in any civil or criminal proceeding. The court receiving such evidence may impose such restrictions as to the confidentiality of photographs, X-rays and medical imaging of any incapacitated person as it deems appropriate.

(2013, cc. 442, 464.)

§ 54.1-2967. Physicians and others rendering medical aid to report certain wounds.

Any physician or other person who renders any medical aid or treatment to any person for any wound which such physician or other person knows or has reason to believe is a wound inflicted by a weapon specified in § 18.2-308 and which wound such physician or other person believes or has reason to believe was not self-inflicted shall as soon as practicable report such fact, including the wounded person's name and address, if known, to the sheriff or chief of police of the county or city in which treatment is rendered. If such medical aid or treatment is rendered in a hospital or similar institution, such physician or other person rendering such medical aid or treatment shall immediately notify the person in charge of such hospital or similar institution, who shall make such report forthwith.

Any physician or other person failing to comply with this section shall be guilty of a Class 3 misdemeanor. Any person participating in the making of a report pursuant to this section or participating in a judicial proceeding resulting therefrom shall be immune from any civil liability in connection therewith, unless it is proved that such person acted in bad faith or with malicious intent.

(1970, c. 531, § 54-276.10; 1972, c. 194; 1975, c. 508; 1976, c. 331; 1979, c. 715; 1988, c. 765.)

§ 18.2-308. Carrying concealed weapons; exceptions; penalty.

A. If any person carries about his person, hidden from common observation, **(i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, machete, razor, slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or (v) any weapon of like kind as those enumerated in this subsection, he is guilty of a Class 1 misdemeanor. A second violation of this section or a conviction under this section subsequent to any conviction under any substantially similar ordinance of any county, city, or town shall be punishable as a Class 6 felony, and a third or subsequent such violation shall be punishable as a Class 5 felony. For the purpose of this section, a weapon shall be deemed to be hidden from common observation when it is observable but is of such deceptive appearance as to disguise the weapon's true nature. It shall be an affirmative defense to a violation of clause (i) regarding a handgun, that a person had been issued, at the time of the offense, a valid concealed handgun permit.**

[not all of § 18.2-308 was cited]

§ 19.2-11.2. Crime victim's right to nondisclosure of certain information; exceptions; testimonial privilege.

Upon request of any witness in a criminal prosecution under § 18.2-46.2 or 18.2-46.3, or any crime victim, neither a law-enforcement agency, the attorney for the Commonwealth, the counsel for a defendant, a court nor the Department of Corrections, nor any employee of any of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the witness or victim or a member of the witness' or victim's family, except to the extent that disclosure is (i) of the site of the crime, (ii) required by law or Rules of the Supreme Court, (iii) necessary for law-enforcement purposes or preparation for court proceedings, or (iv) permitted by the court for good cause.

Except with the written consent of the victim, a law-enforcement agency may not disclose to the public information which directly or indirectly identifies the victim of a crime involving any sexual assault, sexual abuse or family abuse, except to the extent that disclosure is (i) of the site of the crime, (ii) required by law, (iii) necessary for law-enforcement purposes, or (iv) permitted by the court for good cause. In addition, at the request of the victim to the Court of Appeals of Virginia or the Supreme Court of Virginia hearing, on or after July 1, 2007, the case of a crime involving any sexual assault or sexual abuse, no appellate decision shall contain the first or last name of the victim.

Nothing herein shall limit the right to examine witnesses in a court of law or otherwise affect the conduct of any criminal proceeding.

(1994, cc. 845, 931; 2002, cc. 810, 818; 2005, cc. 764, 813; 2007, c. 503.)

§ 19.2-165.1. Payment of medical fees in certain criminal cases; reimbursement.

A. Except as provided in subsection B, all medical fees expended in the gathering of evidence for all criminal cases where medical evidence is necessary to establish a crime has occurred and for cases involving abuse of children under the age of 18 shall be paid by the Commonwealth out of the appropriation for criminal charges, provided that any medical evaluation, examination, or service rendered be performed by a physician or facility specifically designated by the attorney for the Commonwealth in the city or county having jurisdiction of such case for such a purpose. If no such physician or facility is reasonably available in such city or county, then the attorney for the Commonwealth may designate a physician or facility located outside and adjacent to such city or county.

Where there has been no prior designation of such a physician or facility, such medical fees shall be paid out of the appropriation for criminal charges upon authorization by the attorney for the Commonwealth of the city or county having jurisdiction over the case. Such authorization may be granted prior to or within 48 hours after the medical evaluation, examination, or service rendered.

B. All medical fees expended in the gathering of evidence through physical evidence recovery kit examinations conducted on victims complaining of sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 shall be paid by the Commonwealth pursuant to subsection F of § 19.2-368.11:1. Victims complaining of sexual assault shall not be required to participate in the criminal justice system or cooperate with law-enforcement authorities in order to be provided with such forensic medical exams.

C. Upon conviction of the defendant in any case requiring the payment of medical fees authorized by this section, the court shall order that the defendant reimburse the Commonwealth for payment of such fees.

(1976, c. 292; 1982, c. 507; 1987, c. 330; 1997, c. 322; 1999, c. 853; 2000, c. 292; 2003, cc. 28, 772; 2008, cc. 203, 251.)