

The Indiana Statewide Sexual Assault Response Team (SART) has been tasked with creating a Notification of Sexual Assault Victim's Rights through *I.C. 35-40.5*. In doing so, the SART is devoted to ensuring healthcare providers are informed, educated, and compliant with the new legislation so that patients continue to receive the highest quality of care from our medical teams across the state. The SART has released a brochure outlining the Sexual Assault Victim's Rights to all healthcare facilities to provide to patients. Additionally, the patient must sign the accompanying form verifying receipt of the victim's rights brochure. These printed forms are being provided by the SART through ICJI or are available at <https://www.in.gov/cji/2333.htm>.

All providers are encouraged to consider the following recommendations for best practice in implementing notification of rights for **adult patients, age 18 and older**, who have experienced sexual assault.

1. *The rights outlined in I.C. 35-40.5 attach to a patient reporting sexual assault at the point in time they are subject to a medical forensic examination or interviewed by law enforcement (I.C. 35-40.5-2-1).*
 - a. **What does this mean for the provider?** It is the responsibility of the healthcare provider administering a medical forensic examination or completing a Sexual Assault Evidence Kit for the purpose of medically treating and collecting evidence from an adult patient reporting sexual assault, to notify the patient of their victim's rights at the time care is provided. These rights should be explained to the patient during the informed consent explanation process.

2. *The patient retains their rights whether they participate in legal action related to the sexual assault and/or a medical forensic exam (I.C. 35-40.5-2-2).*
 - a. **What does this mean for the provider?** During the informed consent explanation, the patient should be notified of their victim's rights. The patient retains these rights whether they accept or decline a medical forensic examination or report the sexual assault to law enforcement. The patient also retains these rights should they change their mind at any time during the examination or investigation process. It remains the responsibility of the healthcare provider offering the medical forensic examination, to ensure the patient is aware of their rights at the time services are offered.

3. *The patient has the right to speak with a victim advocate or victim services provider during their course of treatment at the hospital. If one is not available, they may speak with a victim's assistant or social worker. (35-40.5-3-1)*
 - a. **What does this mean for the provider?** The provider should assess the patient and address all acute medical needs first. The patient should be



notified of their right to speak to a victim advocate as soon as possible, and this may be included as part of the informed consent process. This ensures that the patient is medically stable, alert, and coherent to determine if they want to accept or decline this right. To protect a patient's privacy and right to confidentiality and autonomy, advocacy should be notified at the time a patient accepts this right. If a patient is unaware that a victim advocate is being contacted on their behalf, or the advocate receives any identifying information (as defined by the HIPAA Privacy Rule) prior to this acceptance, the provider is at risk for violation of the HIPAA Privacy Rule.

- i. The *2019 Indiana Guidelines for the Medical Forensic Examination of Adult and Adolescent Sexual Assault Patients* provides the following recommendations for contacting a victim advocate on behalf a patient reporting sexual assault:

“Ideally, exam facility personnel should call a victim services/advocacy program and ask that an advocate be sent to the exam site (unless an advocate has already been called). This should be done without providing patient identifying information to comply with HIPAA (OVW National Protocol, 2013). The role and services of the advocate should be explained to the patient and the patient given the opportunity to accept or decline to meet, speak with, and receive services from the onsite advocate prior to the advocate being introduced to the patient. While the great benefit of advocates is well established, this is an instance where power and control must be returned to victims, enabling the patient to make their own choices about when and whether to use an advocate.”

4. *A healthcare provider must offer and administer a medical forensic examination and all applicable medical forensic services to the patient reporting sexual assault free of cost (35-40.5-4-1).*

- a. **What does this mean for the provider?** The patient presenting to a healthcare facility has the right to a medical forensic examination, including medical treatment and evidence collection, at no cost to them. Any patient reporting a sexual assault that occurs within Indiana, qualifies for medical services that are covered by the Indiana Criminal Justice Institute. Healthcare facilities are eligible to apply for reimbursement on behalf of the patient at time of services. In accordance with EMTALA, if a patient seeks medical care at a facility that does not have a trained medical forensic provider available, the patient should still be offered a medical screening exam. Once a patient



is medically cleared, the healthcare facility should provide an adequate referral for medical forensic services with the nearest available medical forensic provider.

5. *Prior to beginning a medical forensic examination, it is the responsibility of the healthcare provider, to notify the patient of their victim's rights and their right to speak with a victim advocate. The victim advocate should be notified, with patient approval, prior to the medical forensic examination or when clinically appropriate (I.C. 35-40.5-4-2 and I.C. 35-40.5-4-3).*

- a. **What does this mean for the provider?** Healthcare providers should use clinical judgment after an initial assessment to determine the best course of treatment and care for the patient. As with any patient, informed consent for the medical forensic examination must be obtained before any course of treatment or implementation of services begins. It is recommended that the patient be notified of their victim's rights and right to an advocate at the time of informed consent explanation. Upon receipt of their rights, the patient must sign the state-provided form verifying that they have been provided notification of the rights outlined in I.C. 35-40.5. The patient should always be given the right to accept or decline any of these rights at any time during the examination. The patient retains these rights from the point of attachment and is able to change their mind to accept or decline at any time. These rights should not be forced upon the patient or implemented without proper notification and acceptance by the patient.

Please contact the Indiana SART healthcare members Ashli Smiley at ASmiley@isdh.IN.gov or Angie Morris at indianaenaforensics@gmail.com with questions regarding healthcare provider responsibilities related to RIGHTS OF SEXUAL ASSAULT VICTIMS (§§ 35-40.5-1-1 — 35-40.5-7-1).



Indiana Code 35-40.5**

RIGHTS OF SEXUAL ASSAULT VICTIMS (§§ 35-40.5-1-1 — 35-40.5-7-1)

35-40.5-2-1. When victims' rights attach. [Effective July 1, 2020]

The rights provided to victims under this article attach whenever a victim is subject to:

- (1) a forensic medical exam; or
- (2) an interview by a law enforcement officer;

in relation to injuries, trauma, or an investigation resulting from an alleged sexual assault.

35-40.5-2-2. Victim's retention of rights. [Effective July 1, 2020]

A victim continuously retains all the rights under this article regardless of whether the victim:

- (1) agrees to participate in any civil or criminal proceeding related to the alleged sexual assault; or
- (2) consents to a forensic medical exam to collect forensic evidence related to the alleged sexual assault.

35-40.5-3-1. Right to a victim advocate or victim service provider. [Effective July 1, 2020]

A victim has the right to:

- (1) speak with a victim advocate or victim service provider during any hospital visit for the purpose of receiving a sexual assault examination; and
- (2) speak with a victim advocate or victim service provider during the course of the investigation.

If a victim advocate or victim service provider is not available, a victim has the right to speak with victims assistance or a social worker. A victim retains these rights even if the victim has waived one (1) or more of these rights in a previous examination or interview.

35-40.5-4-1. Duties of provider. [Effective July 1, 2020]

As described in [IC 16-21-8-6](#), a provider shall provide forensic medical exams and additional forensic services to a victim without charge.

35-40.5-4-2. Provider's duty to inform victim of rights. [Effective July 1, 2020]

Before a provider commences a forensic medical examination, or as soon as possible, the provider shall inform the victim of the following:

- (1) The victim's rights under this article and other relevant law in a document to be developed by the state sexual assault response team, which shall be signed by the victim to confirm receipt, unless the victim has already been provided with the document under [IC 35-40.5-5-1](#).
- (2) The victim's right to speak with a victim advocate or victim service provider. If a victim advocate or victim service provider is not available, a victim has the right to speak with victims assistance or a social worker.

35-40.5-4-3. Notification of victim advocate or victim service provider. [Effective July 1, 2020]

Before a provider commences a forensic medical examination, or as soon as possible, the provider shall notify a victim advocate or a victim service provider. If a victim advocate or victim service provider is not available, the provider shall notify victims assistance or a social worker.

**The above mentioned sections have been highlighted as it applies to healthcare providers. For a complete copy of I.C. 35-40.5 please visit <http://iga.in.gov/legislative/laws/2019/ic/titles/035/#35-40-5>



SB 146 FAQ

- 1. What is Senate Bill 146?** *SEA 146 as passed in the 2020 legislative session created IC 35-40.5-1 et. seq. which outlines varying rights conferred upon a victim of a sexual assault that occurred in Indiana. Prior to engaging in a medical forensic exam or interview with law enforcement, IC 35-40.5 requires a medical provider or law enforcement representative to notify a sexual assault victim of their rights outlined in IC 35-40.5-3 and IC 35-40.5-5. The rights granted by IC 35-40.5-3 and IC 35-40.5-5 reiterate the ability for a sexual assault victim to receive a medical forensic exam free of charge, and create the right for a victim to receive advocacy services during an interview with law enforcement, a forensic interview or medical forensic exam. The full text of IC 35-40.5 can be found at: <http://www.iga.in.gov/legislative/laws/2020/ic/titles/035#35-40.5>*
- 2. How does it affect licensed healthcare providers?** *Please see the attached Healthcare Provider Information Sheet for information and **recommendations** for providers as it relates to IC 35-40.5.*
- 3. What patient population does SB 146 apply to?** *To date, the State SART has implemented a process for notifying adult (18 years and older) sexual assault victims of their rights. It is best practice to provide informed consent to all patients, including parents and guardians of a minor (17 years and younger), prior to beginning a medical forensic examination. More information about SB 146's implementation for adolescent and pediatric populations will be available at a future date.*
- 4. Does this mean current practices or facility policies must be changed?** *It is ALWAYS in the best interest of the provider to follow the policies and procedures set by the facility with whom they are employed. If the facility's administration and/or legal department is unaware of your current process, it is the duty of the provider to ensure leadership and legal department know and understand the new legislation to determine how it should be implemented in the facility. It is then the facility's determination whether changes to policies or procedures need to be made or remain the same. Facility administration and legal staff should decide how and when policies, processes, and practices are implemented to protect licensed providers and patients seeking healthcare as it relates to Indiana legislation and best practice recommendations.*

For Healthcare Providers



Contact Information

Ashli Smiley, BSN, RN, SANE-A

Email: ASmiley@isdh.IN.gov

Angie Morris, BSN, RN, SANE-A,

SANE-P, EMT-B

Email:

indianaenaforensics@gmail.com



5. **Can advocacy or victim assistance organizations be contacted by a healthcare provider before patient consent is obtained?** *It is imperative that a provider be acutely aware of the dangers in information sharing prior to obtaining patient consent. Any patient identifier shared with an advocate, LE officer, or other person by the SANE, triage nurse, charge nurse, or other hospital personnel without patient consent may be a HIPAA violation. Advocacy plays a very important role in the healing process of the patient following an assault, however, how and when that becomes a part of the process should not be at the expense of the patient's privacy or safety. It is best practice to ensure the nursing process is utilized to implement advocacy services according to facility policy that protect both the rights of the patient, as well as the provider. Speak to your facility administration and legal department to determine the best process for whether contacting advocacy on behalf of the patient should be implemented before or after consent is obtained. Additional information on HIPAA privacy rules and what may be considered a release of protected health information can be found at:*

- a. https://www.hhs.gov/sites/default/files/provider_ffg.pdf
- b. <https://www.safeta.org/page/ConfidentialityPriva>
- c. https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/special/emergency/final_hipaa_guide_law_enforcement.pdf

6. **Who is the best contact for additional questions or information?** *Please contact the State SART Committee healthcare members Angie Morris and/or Ashli Smiley using their respective contact information provided above.*

Important Links:

IC 35-40.5:

<http://www.iga.in.gov/legislative/laws/2020/ic/titles/035#35-40.5>

HIPAA Privacy Rules:

https://www.hhs.gov/sites/default/files/provider_ffg.pdf

<https://www.safeta.org/page/ConfidentialityPriva>

https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/special/emergency/final_hipaa_guide_law_enforcement.pdf

