

SUMMARY OF LAWS & GUIDELINES

Payment of Sexual Assault Forensic Examinations

CURRENT AS OF FEBRUARY 2012



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INTRODUCTION

Victims of sexual assault will often undergo a Sexual Assault Forensic Examination (SAFE) following an assault and may also receive additional medical treatment for physical and emotional injuries suffered. The majority of states provide for partial or complete payment for a victim's examination costs, in such cases. However, this information has not been compiled in one place to date. A survey was conducted to review the laws in all 50 states, the District of Columbia, and the United States territories regarding state guidelines on SAFEs, with particular emphasis on mechanisms and related issues.¹

Statutes and guidelines were collected on various elements related to payment for the forensic examination, from sources such as Lexis Nexis, Westlaw, and state government websites. The elements researched include: which agency pays, the specific criteria for payment, what services are included and not included in payment schemes, other authorization or eligibility requirements, disqualifying factors, payment methods, whether the state require restitution from a guilty defendant and finally any evidence retention laws related to SAFEs. This document is primarily a summary of the laws with additional resources available, including a statutory compilation of the relevant statutes as well as a more complete series of charts addressing the categories analyzed below with statutory references.²

PAYMENT AGENCY

Most states provide payment for SAFEs through one of four entities: the state's victim compensation fund, the county where the offense occurred, the requesting or referring law enforcement agency, or a designated sexual assault program or fund that is authorized to reimburse or directly pay SAFEs. The majority of states (32) pay through the victim compensation program; six states require the county where the offense occurred to pay for the examination; six states require that the law enforcement agency that requests the forensic examination pay for its commission; and six states designate a sexual assault reimbursement program to pay for forensic examinations.

It should be noted that 12 states cover the cost of forensic medical examinations in more than one way, depending on factors such as whether or not the victim reports the assault or whether or not the victim has insurance or consents to her insurance being billed. These states are represented more than once, to account for all methods of payment, in the table below.

There are six states that do not follow the general model but rather designate a specific state government department to pay for SAFEs. In Maryland, the Department of Health and Mental Hygiene is directed to pay the physician's usual fee as well as costs for evidence collection; however, as the chart notes, the state victim compensation/services program will cover any costs not paid by the department. In Missouri, either the Department of Public Safety or the Department of Health and Senior Services pays. In Texas, the Department of Public Safety pays if the assault has not been reported to a law enforcement agency. In North Dakota, the statute requires the state Attorney General to pay for SAFEs. Finally, Wisconsin requires that the state's Department of Justice pay for SAFEs. It is important to note that most victim compensation funds are administered by the state Attorney General Office's general victim compensation fund. As such, it is possible that some of these general funds are used to pay for SAFEs.

¹ The following document was created from research using numerous sources, including state statutes and state agencies' standards and guidelines. It is important to note that states may have additional protocols that will affect payment for forensic examinations. If you have any questions about the interpretation of your state's laws it is important to check with your state attorney general's office to ensure the most up to date and complete account of the payment mechanisms in your jurisdiction.

² Please contact AEQuitas: The Prosecutors' Resource on Violence Against Women for these additional resources.

State Victim Compensation/Services Program³			County Where Offense Occurred	Law Enforcement Agency with Jurisdiction
Alabama	Kentucky	Puerto Rico	Arizona	California ⁹
Arkansas	Maine	Rhode Island	Kansas	Colorado
Delaware ⁴	Maryland ⁵	South Carolina	Louisiana	Montana ¹⁰
District of Columbia	Massachusetts	Tennessee	Minnesota	Nebraska
Florida	Michigan	Utah	Nevada	Texas (when requesting exam)
Georgia	Mississippi	Vermont	South Dakota	Wyoming (if investigating)
Hawaii	New Hampshire ⁶	Virginia		
Idaho	Hampshire ⁶	Virgin Islands		
Indiana	New Jersey	Washington		
Iowa	New York	Wyoming ⁸		
	Ohio			
	Oklahoma			
	Pennsylvania ⁷			
State Sexual Assault Reimbursement Program		Victim's Insurer Billed First	Other	
Connecticut		Delaware	Maryland – Department of Health and Mental Hygiene	
Illinois		Illinois	Missouri – Department of Public Safety; Department of Health and Senior Services	
New Mexico		Maine	Montana – Office of Restorative Justice in the Department of Justice (if the cost is not the responsibility of a local law enforcement agency)	
North Carolina		New Hampshire	North Dakota – Attorney General	
Oregon		Pennsylvania (with victim's consent)	Texas – Department of Public Safety (if victim has not reported assault to law enforcement)	
West Virginia (West Virginia Prosecuting Attorneys Institute)			Wisconsin – Department of Justice	

³ Note that this list references all victim compensation funds, for victim compensation funds specifically created for sexual assault/forensic examination funds see Summary Charts.

⁴ Delaware's state victim compensation/services program will bear the costs when the victim's insurer does not already cover payment.

⁵ Maryland's state victim compensation/services program will bear the costs to the extent that another agency or a third party does not pay for services.

⁶ New Hampshire's state victim compensation/services program will bear the costs if the victim has no insurance.

⁷ Pennsylvania's victim compensation/services program will bear the costs if the victim's insurance does not cover the examination or cannot be billed.

⁸ Wyoming's state victim compensation/services program will bear the costs where no investigation is conducted.

⁹ In California, if the victim does not cooperate, law enforcement may seek reimbursement from a state agency.

¹⁰ In Montana, the law enforcement agency with jurisdiction will bear the costs of the examination, when the examination is directed by the agency or when evidence obtained by the examination is used for the investigation, prosecution, or resolution of an offense.

Sexual Assault Forensic Examination Kits

Fifteen states have developed uniform SAFE kits and distribute them, at no charge, to health care providers and other professionals who administer forensic examinations throughout the state. Texas does not provide SAFE kits, but the state does issue a standard protocol distributed by Sexual Assault Prevention and Crisis Services. These states include:

- Alabama
- Alaska
- Connecticut
- Illinois
- Maine
- Maryland
- Massachusetts
- Missouri
- Montana
- New Hampshire
- New Jersey
- New York
- Oregon
- South Carolina
- Virgin Islands

PAYMENT CRITERIA

Thirty-eight states statutorily prohibit a health care provider from charging a sexual assault victim for performance of the SAFE; these states include:

- Alaska
- Arkansas
- California
- Colorado
- Connecticut
- Delaware
- Florida
- Georgia
- Illinois
- Indiana
- Iowa
- Kansas
- Kentucky
- Maine
- Maryland
- Michigan
- Minnesota
- Mississippi
- Missouri
- Montana
- Nevada
- New Hampshire
- New Jersey
- New York
- North Carolina
- North Dakota
- Ohio
- Oregon
- Pennsylvania
- South Carolina
- South Dakota
- Tennessee
- Utah
- Vermont
- Virgin Islands
- Washington
- West Virginia
- Wisconsin

Twenty-eight states indicate, by statute, how much the state will pay toward a SAFE. Nineteen indicate a set maximum, which ranges from \$80 to \$1000 (Rhode Island's maximum of \$25,000 is not specific to forensic medical examinations). Four states indicate that a set maximum exists, but the number is not included in the statute; Wisconsin does note that payment is limited to the examination costs. Five states will pay a set percentage of the bills for the examination, ranging from 70% to 100%. Arkansas will pay 65% of relevant medical bills, not to exceed a maximum of \$10,000 (although this cost ceiling is not specific to forensic medical examinations). Ohio pays a flat fee of \$500.

Set Maximum		Percentage of Bill	Other
Implied but no amount in statute	Delaware, Missouri, Virginia, Wisconsin (limited to exam costs)	Utah – 70% of the eligible hospital services and supplies Vermont – 70% Louisiana – 100% New Mexico – 100% of bills resulting from rape exams, evidence collection, or child sexual abuse exams	Arkansas will reimburse up to 65% of the medical bills, not to exceed a total reimbursement of \$10,000 (not specific to forensic medical exams)
\$80	Maryland (for examination and collection of evidence)		
\$150	New Mexico (for medical costs not associated with evidence collection)		
\$300	California ¹¹ , Utah ¹²		
\$350	Utah (for rent or use of an examination room or space for the purpose of conducting a sexual assault forensic exam)		
\$500	Florida, Iowa, ¹³ Oklahoma ¹⁴		
\$600	Michigan, ¹⁵ Montana, Utah ¹⁶		
\$700	Texas		
\$750	Maine, Tennessee		
\$785	Oregon ¹⁷		
\$800	New York, North Carolina ¹⁸		
\$1000	Georgia, Nevada, Pennsylvania		
\$25000	Rhode Island (not specific to forensic medical exams)		Ohio will reimburse a flat fee of \$500

SERVICES INCLUDED

Apart from SAFE kit costs and any other costs immediately related to the administration of the examination, 33 state statutes include specific collateral services to the victim’s care, for which the state will cover the costs. Thirteen states cover the cost of a pregnancy test, and six of those states provide payment for emergency contraception. Fifteen states will pay for tests for sexually transmitted infections (STI). Fifteen states cover costs of medications prescribed following the forensic examination. Ten states will pay hospital and emergency room fees. Two states, Indiana and Vermont, will pay for the victim’s counseling related to the sexual assault. Five states will pay for treatment of injuries related to the sexual assault. Four states provide payment for reasonable medical care related to the sexual assault. Three states will pay for toxicology and drug testing.

¹¹ For more information and guidance on the recently amended Cal. Penal Code §§ 13823.7, 13823.13, and 13823.95, see California Emergency Management Agency, Information Bulletin: Sexual Assault (Jan. 1, 2012), available at http://www.californiapolicechiefs.org/files/legislative/VAWA_Information_Bulletin.pdf.

¹² Utah will reimburse up to \$300 without photo documentation and up to \$600 with photo documentation.

¹³ Up to \$300 for the examination facility and \$200 for examiner fees.

¹⁴ A maximum of \$500 may be paid; \$450 for a sexual assault examination and \$50 for medications, which are related to the sexual assault and directed and deemed necessary by said health care professional.

¹⁵ Maximum of \$600 with not more than \$400 for the use of facilities and the forensic examination; not more than \$125 for laboratory services; not more than \$75 for dispensing pharmaceutical items related to the sexual assault.

¹⁶ See above, note 10.

¹⁷ \$380 for examination plus collection of forensic evidence with the State Police Kit; \$175 for examination without collection of forensic evidence; \$55 for emergency contraception (including urine pregnancy test); \$100 for STD prophylaxis; and an additional payment of \$75 for examination conducted by a SANE.

¹⁸ Maximum of \$800; \$350 for physician or SANE; \$250 for hospital/facility Fee; \$200 for other eligible expenses.

Pregnancy Test	STI Test	Medications	Hospital/ER Fees	Reasonable Medical Care
California Connecticut Delaware Indiana Iowa Maine Minnesota Montana New Jersey South Carolina Texas Utah Virgin Islands	California Connecticut Delaware Illinois Indiana Iowa Maine Minnesota Montana New Jersey South Carolina Texas Utah Virgin Islands Wisconsin	Illinois Indiana Maine Michigan Montana New Hampshire (voucher for HIV/AIDS prophylactic) New Mexico New York North Carolina North Dakota Ohio Oklahoma Pennsylvania Utah Wisconsin	Delaware Iowa Maine Maryland Montana New Jersey New York North Carolina South Dakota Utah	Massachusetts Mississippi Rhode Island West Virginia
Emergency Contraception	Toxicology/Drug Testing	Counseling	Treatment for Injuries Related to the Sexual Assault	
California Maine New Jersey South Carolina Utah Virgin Islands	Connecticut Montana Texas	Indiana Vermont	Illinois Indiana Maryland Nevada New Mexico	

SERVICES NOT INCLUDED

Some states specifically preclude certain services from payment. Seven states will not pay for treatment of injuries related to the sexual assault. Six states will not pay for any services unrelated to the sexual assault examination. Three states will not pay for medications prescribed to the victim as a result of the forensic examination. Three states will not pay the costs of tests for sexually transmitted infections. Two states will not pay for emergency contraception or pregnancy testing. Indiana will not pay for inpatient hospital services and Pennsylvania will not pay for drug testing.

Treatment for Injuries	Alabama, Missouri, Montana, Oregon, Texas, Washington, West Virginia
Services Unrelated to SAFE	Indiana, Massachusetts, North Dakota, Oregon, Rhode Island, West Virginia
Medication	Alabama, Missouri, Oregon
Emergency Contraception	Missouri, West Virginia
Inpatient Hospital Services	Indiana
Drug Testing	Pennsylvania
STI Testing	Missouri, Oregon, West Virginia
Pregnancy Testing	Missouri, West Virginia

OTHER AUTHORIZATION OR ELIGIBILITY REQUIREMENTS

Some states include certain authorization or eligibility requirements in their payment statutes. The most common requirements pertain to the time following the assault within which the victim must seek a forensic medical examination or the time following the examination within which the claim for payment must be submitted. Six states require that the forensic examination be performed within a certain timeframe after the sexual assault, ranging from 72 hours to seven days. Seven states require that the claim for payment or reimbursement be filed within a certain amount of time following the administration of the examination, ranging from 120 days to three years.

There are some states that require a victim to report a sexual assault, to law enforcement, in order to be eligible for payment of medical care.¹⁹ Most of these states' statutes provide that a victim seeking a forensic medical examination satisfies this law enforcement reporting requirement. This reporting requirement is separate from the mandated reporting familiar to health care providers. Indiana and the Virgin Islands specifically require the victim to report the assault to law enforcement in order to receive payment for the forensic medical examination. Maryland also requires that the victim report to law enforcement but does provide that, if the victim does not wish to report immediately but still wants evidence collected, the SAFE may still perform the examination and collect evidence to satisfy this requirement.²⁰ Additionally, Indiana requires a written statement from a representative of a law enforcement agency confirming that the sex crime victim has cooperated in the initial law enforcement investigation and report.

A minority of states impose various other requirements on a claim for payment of a forensic medical examination. Seven states require the submission of an itemized bill with the application for payment or reimbursement. Most states require the hospital or medical provider to submit the itemized bill but providers should see state specific law. Three states include specific language that a medical professional or sexual assault nurse examiner must perform the examination. Two states will only pay for forensic examinations that use the standardized SAFE kit provided by the state. Georgia will only pay for forensic examinations that are specifically administered for evidence collection. New York requires the use of a standardized form for payment or reimbursement requests. Indiana will only pay for forensic examinations on victims over the age of 18.

Examination Performed Within Specified Time Frame after the Assault	72 Hours: Arkansas (waivable for good cause), Montana, North Dakota
	84 Hours: Oregon (complete exam) ²¹
	96 Hours: New York, Texas
	120 Hours: Maryland
	7 days: Oregon (partial exam)
Claim Filed Within Specified Time Frame After the Examination	120 Days: Missouri
	1 year: New York, Pennsylvania, Tennessee, Utah, Wisconsin
	3 Years: Massachusetts
Report to Law Enforcement	Indiana, Maryland, ²² Virgin Islands
Cooperation with Law Enforcement	Indiana (cooperated in the initial law enforcement investigation and report)

¹⁹ See "Other Provisions Summary Chart" for all states that permit a forensic medical examination to satisfy the requirement that the victim report the sexual assault to law enforcement.

²⁰ The statute allows for the SAFE to perform the exam and collect evidence to be held in case the victim wishes to report at a later date. MD. CODE REGS. 10.12.02.03 (2011).

²¹ Oregon's statute provides for compensation for both a complete and partial medical assessment using the Oregon State Police SAFE Kit, with separate time requirements. OR. ADMIN. R. 137-084-0010.

²² See above for more information on Maryland's reporting requirement; *see also* MD. CODE REGS. 10.12.02.03.

Performed by Physician or SANE	Maryland, Montana, Texas
Limited Purpose of Evidence Collection²³	Georgia
Itemized Bill	Arkansas, Florida, Iowa, New York, Oklahoma, Tennessee, Utah
Standard Form	New York
Victim over 18	Indiana
Use of Standard SAFE Kit	Maryland, Montana

DISQUALIFYING FACTORS

Some states indicate statutory factors that will disallow payment or reimbursement for a SAFE. For example, Oregon will deny payment if the claim is for duplicate services related to one assault, if the provider who administered the examination was not an eligible medical provider, if the state has insufficient funds to pay for the examination, if the services claimed were provided to someone other than the victim, or if statutory or administrative requirements for the claim were not met. Massachusetts and Rhode Island will bar payment if unjust enrichment will occur if the state pays for the examination. Alabama will deny payment on a submitted bill where the investigation determined that a rape or sexual assault did not occur. Also, in Alabama, the health care provider cannot be reimbursed for the cost of a SAFE kit included on the billing statement, if the kit was provided at no cost. Wisconsin will not pay for a victim's forensic medical examination if the victim received compensation for the exam from another source.

Alabama	Evidence that assault did not occur
	Sexual Assault Evidence Collection Kit if the kit was provided at no cost to the health care provider
Massachusetts	Unjust enrichment
Oregon	Duplicate services
	Insufficient funds
	Provider is not eligible medical provider
	Services were provided to someone other than an eligible victim
	Services were not provided in accordance with statutory requirements
	Administrative omissions on part of medical services provider
Rhode Island²⁴	Unjust enrichment
	Injury while serving time in any federal, state, county or city jail, prison, correctional facility or criminal institution
Wisconsin	Received compensation from any other source

²³ Georgia's laws specifically state that the Georgia Crime Victims Emergency Fund is responsible for the payment of a medical examination to the extent that the costs incurred were for the limited purpose of collecting evidence. GA. CODE ANN., § 16-6-1(c).

²⁴ Rhode Island's criminal injury compensation laws are general and not specific to sexual assault; thus, the disqualifying factors listed in this table may not always be relevant but professionals should be aware of the law.

PAYMENT METHOD

Most states that cover the costs of a victim’s SAFE provide such payment through one of two methods: either the health care provider bills the state directly and receives direct payment from the state or the state reimburses whatever entity or individual already paid for the costs of the forensic examination. Twenty-three states provide for payment to go from the agency to the health care provider with 10 of those states providing for “direct payment” and 13 stating that an agency will “reimburse” the health care provider who administers a forensic examination.²⁵ This distinction is simply based on the specific language choice each state has used to codify payment, and thus the 23 aforementioned states are listed together in the table below. Three states provide direct reimbursement to the victim. This happens in Alabama and Iowa if the victim personally paid for the examination; and in Pennsylvania, if the victim was erroneously billed and subsequently paid for the examination.

Four states require the health care provider to seek reimbursement from the victim’s insurer before turning to the state for payment. Six states allow the health care provider to bill the victim’s insurer, but only with the victim’s consent. Two states allow health care providers to bill the victim’s insurer only for services provided that were outside the scope of the SAFE. Three states prohibit health care providers from billing a victim’s insurer for the costs of the examination. In Oregon, the health care provider may bill the victim’s insurer if the paying department has insufficient funds to pay for the examination. In New Hampshire, if a victim pays an insurance deductible or co-payment at the time of the examination, the victim compensation fund will reimburse that payment to the victim.

Direct Payment or Reimbursement from State to Health Care Provider		Reimbursement to Victims who Paid for Exam
Alabama	New Hampshire	Alabama (if victim paid)
Arkansas	New York	Iowa (no restrictions)
Delaware	North Carolina	New Hampshire (if victim paid insurance deductible)
Illinois	North Dakota	Pennsylvania (if erroneously billed)
Indiana	Oklahoma ²⁶	
Iowa (to whoever paid)	Oregon	
Kentucky	South Carolina	
Maine	Texas ²⁷	
Maryland	Virgin Islands	
Massachusetts	Virginia	
Mississippi	Wisconsin	
	Wyoming	

²⁵ The states that will reimburse a health care provider are, Arizona, Arkansas, Illinois, Indiana, Iowa (to the party that paid), Kentucky, Maryland, New Hampshire, New York, North Dakota, Oklahoma, Oregon, South Carolina, and the Virgin Islands.

²⁶ The Crime Victims Compensation Board is authorized to pay for this examination and the medications directed by the qualified licensed health care professional upon application *submitted by the victim of a sexual assault*. OKLA. STAT. ANN. TIT. 21, §142.20 (emphasis added).

²⁷ Texas law provides that the Department of Public Safety shall pay the appropriate fees as set out by Attorney General Standards for the forensic portion of the medical exam and that the Attorney General shall reimburse the department for fees paid under this section of the law. TEX. CODE OF CRIM. PROC. ANN. ART. §56.065(d).

Bill Insurance First	Bill Insurance Only with Victim's Consent	Bill Insurance for Services Outside Scope of SAFE	May Not Bill Insurance
Delaware Massachusetts South Dakota Utah	Michigan Minnesota New York Oklahoma (reimbursement to Sexual Assault Examination Fund) Pennsylvania Wisconsin	Maine West Virginia	North Carolina Ohio Oregon (unless Department has insufficient funds to pay)

RESTITUTION FROM GUILTY DEFENDANT

Nine states provide that a defendant who is convicted of a sex crime can or will be liable for restitution. In two states, a guilty defendant in a sex crime is assessed an additional fee. In Delaware, the fee is \$50 for each misdemeanor conviction and \$100 for each felony conviction, to be paid to the Victim Compensation fund. In New Jersey, the fee is \$800 to be paid to the Statewide Sexual Assault Nurse Examiner Program Fund.

Restitution	Additional Fees to be Paid
California Florida Iowa Kansas Mississippi South Dakota Utah Virginia Wyoming	Delaware: \$50 for each misdemeanor conviction; \$100 for each felony conviction New Jersey: \$800

EVIDENCE RETENTION

Because one of the objectives of a SAFE is to collect evidence, many states have statutes covering the procedures for evidence collection and retention. Fourteen states indicate, by statute, the length of time that evidence collected from a SAFE will be maintained before being destroyed, ranging from 30 days to 55 years. Four states indicate that evidence will be maintained until the earlier of two instances: in Alabama, this is the earlier of 50 years or the resolution of the crime in which the SAFE kit may be used as evidence; in Arizona, it is the earlier of 55 years or the end of the defendant's state supervision; in Connecticut, it is the earlier of 60 days or the end of criminal proceedings in which the SAFE kit may be used as evidence; and in Indiana, it is the earlier of one year or the end of criminal proceedings in which the SAFE kit may be used as evidence.

Evidence Retention	30 Days	Louisiana, New York
	60 Days	Montana, New Hampshire
	90 Days	Kentucky, Maine
	6 Months	Massachusetts, Oregon
	2 Years	Texas
	5 Years	Kansas
Earlier of Two Instances: Stated Time or End of Criminal Proceedings	60 Days: Connecticut	
	1 Year: Indiana	
Earlier of Two Instances: Stated Time or End of Defendant's Supervision	55 Years: Arizona	
Earlier of Two Instances: Duration of Unsolved Crime	50 Years: Alabama	