

**IC 35-40.5**  
**RIGHTS OF SEXUAL ASSAULT**  
**VICTIMS**

Outline & Discussion

- **IC 35-40.5-2-1 When rights attach** Sec. 1. 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.
- **IC 35-40.5-2-2 Victim continuously retains rights** Sec. 2. 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.
- **IC 35-40.5-3-1 Victim's right to speak with certain persons** Sec. 1. 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.
- **IC 35-40.5-3-2 Certain communications inadmissible as evidence** Sec. 2. A victim's communications with a victim advocate, victim service provider, victims assistance, or a social worker are not admissible into evidence for any purpose except with consent of the victim.
- **IC 35-40.5-4-1 Services provided to victim without charge** Sec. 1. As described in [IC 16-21-8-6](#), a provider shall provide forensic medical exams and additional forensic services to a victim without charge.
- **IC 35-40.5-4-2 Provider's duty to inform victim of certain rights** Sec. 2. 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.
- **IC 35-40.5-4-3 Provider to notify victim advocate** Sec. 3. 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.
- **IC 35-40.5-5-1 Law enforcement duty to inform** Sec. 1. Before a law enforcement officer commences an interview of a victim, the law enforcement officer 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 35-40.5-4-2](#). (2) The victim's right to speak with a victim advocate or victim service provider during the course of the investigation, and that the victim has the right to speak to victims assistance or a social worker if a victim advocate or victim service provider is not available.
- **IC 35-40.5-6-1 Defendant may not object to failure to comply** Sec. 1. (a) A defendant or a person accused or convicted of a crime against a victim may not object to any failure in complying with this article. (b) The failure to provide a right or notice to a victim under this section may not be used by a defendant to seek to have the conviction or sentence set aside.
- **IC 35-40.5-7-1 Duty of law enforcement to inform victim of rights** Sec. 1. (a) Upon initial interaction with a victim, a law enforcement officer or provider shall provide the victim with a document developed by the state sexual assault response team that explains the rights of victims: (1) under this article and other relevant law; (2) in a format accessible to persons with visual disabilities; and (3) in English, Spanish, and German. (b) The document described in subsection (a) shall include the following: (1) A clear statement that a victim is not required to receive a medical evidentiary or physical examination in order to retain the rights provided under this article or any other relevant law. (2) Information concerning state and federal victim compensation funds for medical and other costs associated with the sexual assault.

Full Code:  
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Law went into effect 7/1/20  
and upheld our current  
procedures for activating  
Advocacy to local hospitals.



- **IC 35-40.5-3-1 Victim's right to speak with certain persons**

Sec. 1. 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 victim's 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.

- **IC 35-40.5-4-2 Provider's duty to inform victim of certain rights**

Sec. 2. 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 victim's assistance or a social worker.

- **IC 35-40.5-4-3 Provider to notify victim advocate**

Sec. 3. 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.

# Brochure & Consent Signature Page

LakeCountySART.org

Remember the PIN#

## WHAT EXPENSES ARE COVERED BY CJJ?

For victims of sexual assault, ICJI administers payment for certain costs associated with a medical forensic exam. These costs include (not limited to): a medical forensic exam, mental health counseling, certain diagnostic testing, initial pregnancy and follow-up pregnancy testing, certain laboratory testing for STDs, alcohol, drugs, suturing and care of wounds and other limited outpatient services. The approved costs will be paid by ICJI to the provider, pending certain conditions are met.

Additionally, ICJI may also provide payment for: one follow-up pregnancy test, STD testing up to (30) days following the initial treatment, one syphilis test up to (90) days following the initial visit and mental health treatment up to \$3,000. Services must be provided by a licensed mental health provider.

## HOW DO I TRACK THE STATUS OF MY SEXUAL ASSAULT KIT?

In order to track the status of your sexual assault kit, please follow these instructions:

1. Log in to the Victim Compensation Claims System by visiting: [vcc.cjj.in.gov/Public/Home](http://vcc.cjj.in.gov/Public/Home)
2. Select the Sexual Assault Kit tracking module.
3. Enter your sexual assault kit serial number and assigned pin.

Sexual Assault Kit \_\_\_\_\_

PIN \_\_\_\_\_

Your local advocacy center:  
**Fair Haven Rape Crisis Center**  
[fairhavenrcc.org](http://fairhavenrcc.org)  
Office Line: (219) 961-4357  
24-Hour Rape Crisis Line: (219) 218-2552



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## CONTACT US

317.232.1233  
[www.cjj.in.gov/2333.htm](http://www.cjj.in.gov/2333.htm)

101 W. Washington Street, Suite 1170 | Indianapolis, IN 46204

## RIGHTS OF VICTIMS OF SEXUAL ASSAULT

Helping victims of sexual assault better understand their rights.



Survivor presents  
at health care  
facility

Medical needs are  
accessed.

SANE & VA are  
dispatched to  
hospital

Upon VA arrival,  
Survivor is  
informed &  
consent received

Lake County's Medical  
Activation Protocol

# Health Care Providers on IN State SART Released HIPAA Directive & FAQ's

- There are 5 points in the directive. Full document & FAQ's can be accessed on the ENA website:  
[https://www.indianaena.org/forensic-links?fbclid=IwAR0xK-qy1ZJGSYc1NTN814Qb0jyW\\_xMvBK-RFAI5VnwFgTYLr8fxICRa0KA](https://www.indianaena.org/forensic-links?fbclid=IwAR0xK-qy1ZJGSYc1NTN814Qb0jyW_xMvBK-RFAI5VnwFgTYLr8fxICRa0KA)
- The point that is affecting Lake County and our SART activation protocol is point #3.
- Point #3: 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. It is only at the time a patient accepts this right that a victim advocate be notified. If a patient is unaware that a victim advocate is being contacted on their behalf, or the advocate arrives to the hospital prior to this acceptance, the provider is at risk for violation of the HIPAA Privacy Rule.

# Welcome to the Discussion

- Amy Blackett  
Domestic Violence/Sexual  
Assault Resource Prosecutor  
Indiana Prosecuting Attorneys  
Council  
[ablackett@ipac.in.gov](mailto:ablackett@ipac.in.gov)
- Ashli Smiley, BSN, RN, SANE-A  
[ASmiley@isdh.IN.gov](mailto:ASmiley@isdh.IN.gov)

# Open Discussion Questions



How is this affecting your program at your hospital?



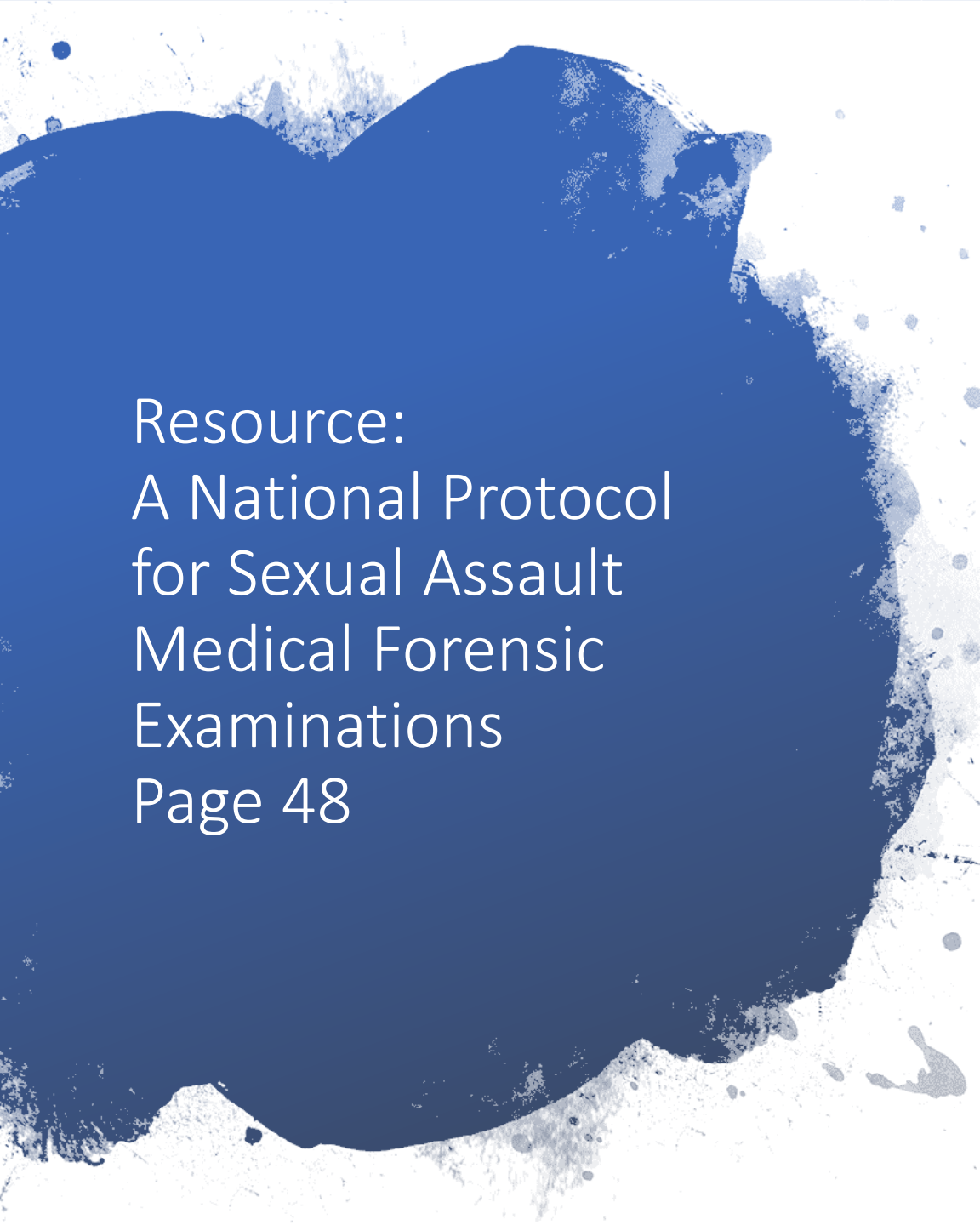
How is this affecting survivors accessing acute advocacy care?





# HIPAA Privacy Rule

Numerous directives for immediate Advocacy  
contact using de-identified information.



Resource:  
A National Protocol  
for Sexual Assault  
Medical Forensic  
Examinations  
Page 48

- **Consider the impact of federal privacy laws regarding health information on victims of sexual assault.** The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule and its implementing regulations (found at 45 CFR Part 160 and Subparts A and E of Part 164), established national standards for the protection of certain individually identifiable health information created or held by health plans, certain health care providers, and health clearinghouses. **With respect to disclosures to victim advocacy organizations, the HIPAA Privacy Rule permits hospitals and other health care providers to alert a victim advocacy organization to the presence of a victim of sexual assault at the hospital without giving any identifying information about the victim.**

*Resource:*  
*FAQ about U.S. Federal Laws  
and Confidentiality for Survivors.*  
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Project and The Confidentiality  
Institute.

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Grant #2007-TA-AX-K012.  
If you have questions, please  
email: [tcip@nnedv.org](mailto:tcip@nnedv.org)

**Question 15. Q:** *What are some exceptions to HIPAA confidentiality?*

**A:** HIPAA permits certain limited disclosures of protected health when there is a risk of domestic violence, even in some circumstances where the patient does not consent to the disclosure. 45 CFR § 164.512.

The HIPAA privacy rule provides for a permitted disclosure of protected health information about an individual whom the provider reasonably believes to be a victim of abuse, neglect or domestic violence. 45 CFR §164.512.




## Privacy in HIPAA, VAWA, FVPSA & VOCA: Different Laws, Different Purposes



Privacy Question:	HIPAA Privacy & Security Rules:	VAWA/FVPSA/VOCA:
<b>Can the organization disclose personal information about victims of abuse, neglect or domestic violence to law enforcement without consent?</b>	Yes, if the law enforcement request meets certain requirements described in the rules at 45 CFR 164.512	Only if there is a specific statutory or court mandate requiring disclosure
<b>Does the organization have to give notice to the person if his/her information is disclosed to law enforcement?</b>	Not always – medical provider has some discretion to evaluate harm and best interests	Yes. Grantee shall make reasonable attempts to provide notice to victims affected by the disclosure of information
<b>Can non-identifying information be disclosed without consent?</b>	Yes, “de-identified” health information which does not identify an individual is not protected and can be disclosed	Yes, nonpersonally identifying data in the aggregate regarding services to clients and nonpersonally identifying demographic information can be shared
<b>Where are the laws &amp; rules found?</b>	45 CFR Parts 160 and 164	34 USC §12291 (a)(20) & (b)(2) 42 USC §10402(7); 42 USC §10406(c)(5); 28 CFR §94.115

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HIPAA Fact Sheet #2  
End Violence Against Women  
International (EVAWI)  
[https://www.evawintl.org/PAGEID  
20/Best-Practices/FAQs/HIPAA](https://www.evawintl.org/PAGEID20/Best-Practices/FAQs/HIPAA)

- Question: Can a hospital notify a sexual assault program that a survivor is in transport to or is currently present in, an emergency room?
- Answer: Yes. A hospital may notify the program of a survivor's presence in the ER. The hospital may do so as long as it provides only "de-identified information" to the program.



# IFAN Position Statement: page #2

## Association Position

The IAFN recognizes and supports the role of the Victim Advocate as part of a victim-centered, coordinated, multidisciplinary team approach to providing services to victims of violence, and particularly to victims of sexual assault. We believe that victim advocates should be involved as first responders in any Coordinated Community Response Team providing services to victims, families, caregivers and others. (A first responder is defined as those individuals who respond immediately to the incident to provide care and treatment.)

Further, we support the policy that victim advocate services are offered and made readily available upon initial victim identification or disclosure. Additionally, it is our considered opinion that nurses and all other team members should collaborate closely with advocates in the development and implementation of community protocols that provide timely access to services for victims. Protocols should also clearly demonstrate understanding and respect for the roles of all members of the Coordinated Community Response Team.

Virginia Model- Page 46

Excerpts taken from the Office for Civil Rights (2003).

Summary of the HIPAA Privacy Rule. Published by the United States Department of Health and Human Services, Washington, D.C. Available from <http://www.hhs.gov/>

<https://www.communitysolutionsva.org//index.php/resources/item/sexual-assault-response-teams-sart-a-model-protocol-for-virginia>

- Professionals have cited concerns about HIPAA's impact on collaborative response to sexual assault victims. Concerns specifically focus on how professionals can exchange information regarding sexual assault cases without violating HIPAA's rules of patient confidentiality. Even if written permission has not been obtained, the Privacy Rule permits release of certain information under the certain circumstances. There are no restrictions on the use or disclosure of de-identified health information.



How do we move forward from here?



# Lake County SART Protocol

2020 Updated Protocols will be ready for distribution by September 1, 2020.

- Health care facilities providing treatment to sexual assault victims will contact the Rape Crisis Center's 24/hour hotline to dispatch an Advocate to the facility upon presentation or as soon as possible.
- Health Care Providers should establish and implement the above activation procedure that will allow for the immediate contact of the Rape Crisis Center using **only** de-identified information which is allowable under the HIPAA Privacy Rule.
- Dispatch Example: "This is \_\_\_\_\_ Hospital calling to request an advocate."
- *That is all you need to say!*

## A Contingency Plan: Business Associate Agreement (BAA)

- Fact Sheet #2 (page 4) – A program may determine that entering into an agreement to protect information with Provider is in the Program’s and best Survivors best interest.
- An agreement between the hospital and the sexual assault program will not only facilitate the exchange of such information between the hospital and the sexual assault advocacy program but will also ensure that the survivor receives the best possible services and care.
- Sample Agreement can be found:

<https://www.hhs.gov/hipaa/for-professionals/covered-entities/sample-business-associate-agreement-provisions/index.html>



Any Final Questions

# Wrap Up:

\*All resources listed in today's presentation are available by PDF on our website.

[www.LakeCountySART.org](http://www.LakeCountySART.org)

IN Victims Rights  
Medical Resources



## CONTACT INFORMATION

Kelly Vates

Executive Director

[kelly@FairHavenRCC.org](mailto:kelly@FairHavenRCC.org)

PH: 219-961-4357

24/HR Crisis Line: 219-218-2552

Call to dispatch an advocate to ER

- SANE's will receive a packet that will include:
  - A PDF of this power point presentation\*
  - All resources listed\*
  - A letter from Fair Haven Rape Crisis Center outlining our position on de-identified information.
  - A recommendation for protocol implementation.
  - A BAA agreement