

MASSACHUSETTS SEXUAL ASSAULT NURSE EXAMINER PROGRAM  
PROTOCOL FOR ADULT/ADOLESCENT SANEs and EMERGENCY  
DEPARTMENT CLINICIANS

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## SECTION IV

### OBTAINING PATIENT CONSENT

#### Informed Consent

The SANE and/or medical provider must obtain informed consent from the patient for the physical exam and evidence collection. Obtaining consent ensures that the patient understands the various options of care available and what the exam and evidence collection process entails. The patient's written consent must be obtained before initiating the SANE exam.

#### Guide for SANEs

The SANE must carefully explain the following points to the patient:

1. The purpose of the SANE exam is three-fold:
  - a. A thorough head-to-toe and assessment for injury;
  - b. Collection of physical evidence;
  - c. Documentation of the patient's report of the assault in the patient's own words and through photographs.

Toxicology testing if indicated – which requires a separate consent. (Also See Section IX – Forensic Examination - Use of the MA Sexual Assault Evidence Collection Kit (MSAECK) – Step 2 Toxicology Testing).

2. Discuss with patient:
  - a. The itemized steps involved in evidence collection and the potential value of the evidence.
  - b. The patient's right to decline **any** portion of the examination and evidence collection **at any time** during the examination process, even though they previously indicated their consent.
  - c. The patient is **not** being asked to consent or commit to any course of action in the criminal justice system or the courts.
  - d. The patient **may or may not** choose to report their assault to police at a later time; however, they do not need to file a police report at the time of the SANE examination.
  - e. If the patient would like to report to police at the present time, the SANE can facilitate that process.
  - f. Medical care will be provided whether or not the patient gives permission for any evidence collection.
  - g. The terms of kit storage to ensure the patient understands the roles of the Police and the Crime Lab with respect to the transport and storage of evidence:
    - All evidence collection kits, including Forms 2A, 2B, 3, 4, 5 and 6, and samples of physical evidence are sealed and given a specific MSAECK barcode number.
    - In reported cases, police transport sealed MSAECKs to the Boston or State Police Crime lab for analysis. Transport should occur in a timely manner, and the current location of the MSAECK is available to the patient through the Massachusetts TRACK Kit System.
    - Adolescents < 16 years should be informed that their forensic evidence kit will be analyzed by the crime lab whether or not they choose to report their assault to the police.
    - If a patient does **not** choose to report to police, their MSAECK is identified only by the kit's barcode number and not the patient's name. As per Crime Justice Bill H4011 enacted April 2018, "non-investigatory kits shall be safely stored by law enforcement in a manner that preserves evidence for the duration of the statute of limitations for all sexual assault and rape cases." In unreported cases, the current location of the MSAECK is also available to the patient through the Massachusetts TRACK Kit System.
    - ALL completed Toxicology Kits are transported to the State Police Crime Lab, where they are tested.

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- Toxicology results for reported cases are available to law enforcement and patients may obtain results by contacting law enforcement in the town where their assault occurred.
    - Toxicology Kits for unreported cases, are identified only by a Toxicology barcode number (MAT ###) and patients can receive their results in unreported cases by calling the confidential, toll-free Statewide Toxicology Results Information line in approximately 12 weeks.
  - (Review Form 7, Aftercare Instructions with patients for details)
- h. Upon discharge, all patients will be provided with a card containing their containing their MA Sexual Assault Evidence Collection Kit (MSAECK) barcode #, if appropriate a Toxicology Kit barcode # (MAT ###), and a temporary password. This information will allow the patient with access to the MA TRACK Kit system, where they can change their password, and track the physical location of their MSAECK/Toxicology Kit.
- i. Provide the patient with the opportunity to ask questions and respond to any questions.

### CONSENT MODIFICATIONS BASED ON PATIENT STATUS

#### **Patients with Intellectual/Developmental Disabilities (I/DD)**

In order to ensure patients with intellectual disabilities are treated with dignity and respect, the following approaches may be beneficial:

1. The SANE/hospital staff should provide adequate time for the consent process so the patient has sufficient time to ask questions, have questions answered, and communicate consent before the patient signs the consent document.
2. The patient's understanding may be indicated in many ways such as nodding their head, raising a hand, making a signal, or verbally answering questions.
3. Ask the patient to explain their understanding of any procedure described.
4. Persons with intellectual disabilities may not initially reveal the disability. The SANE/hospital staff must develop a relationship of trust and respect with the patient so that the full extent of the patient's disability can be revealed. Additionally, establishing trust with the patient reduces the chance the patient will feel intimidated.
5. Contact the Disabled Persons Protection Commission (DPPC) Hotline (**1-800-426-9009**) for consent issues related to patients with disabilities who are unable to consent on their own.

#### **Patients with Mental Health Challenges**

1. Persons suffering from mental illness deserve the same dignified and respectful approach, used for patients without such challenges. Patients with mental health issues may remain competent to give informed consent.
2. A person with mental health issues may be admitted to the Emergency Department pursuant to an emergency restraint as a precautionary protective measure. A Section 12 restraint does not necessarily mean that the patient is incapable of giving consent for a SANE exam and evidence collection. When the patient is deemed medically safe and can cooperate with the exam, (See [Appendix 3 – Patient Readiness for SANE Care](#)) the SANE/hospital staff can proceed to obtain written patient consent using the MSAECK Consent Form 1.

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## **Adolescent Patients (12 to 17 Years of Age)**

(Also see [Section VI: Caring for Special Patient Populations - Adolescents](#))

1. A minor's consent is sufficient without parent/guardian co-signature to provide medical care and evidence collection when he/she presents for emergency care within 5 days/120 hours following a sexual assault.
2. Massachusetts law expressly provides instances such as exposure to sexually transmitted infections and risk of pregnancy as instances where persons under the age of 18 can consent for treatment pursuant to the "emergency treatment for minors" statute.

## **Patients Under the Influence of Alcohol and/or Drugs**

A patient who is awake, alert, oriented to time, place, person, time, declared medically safe, and can cooperate is competent to give consent for SANE care and a forensic exam. A toxicology screen or alcohol level is not required for a patient to be deemed competent to consent for SANE care.

## **Patients Unable to Give Consent**

In some instances there may be high suspicion that a sexual assault has occurred, but the patient may be unresponsive and unable to give consent. These instances may prompt an Administrative Consent option in the facility where the SANE is providing care (refer to Section V: Caring for Patients in the ICU/OR).

## **Patients Who Do Not Give Consent**

A SANE **will not** examine a patient who declines an exam. The SANE shall consult with the Primary Nurse and ED Physician regarding the appropriate medical management, including medications and follow-up care. The ED staff may wish to consult with the Social Service Department or Child Protection Team, if available.