

# Forensic Nursing in the Commonwealth

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## Study Information

- HJR 614 (Delaney) requested that Crime Commission do Forensic Nursing study
- Due to time constraints and with Crime Commission member approval, the director asked JCHC to conduct the study
- Approved by JCHC members during work plan meeting
- Study topics: (See HJR 614 in appendix)
  - Existing forensic nursing (FN) programs in Virginia
  - Regions with no FN programs or nurses and closest location to receive services
  - Current funding sources for existing FN programs
    - Creating new programs: cost and potential funding sources
  - Cost of evidence collecting and court testifying
    - Potential funding sources for testimony costs
  - Current FN workforce and ways to increase availability of FN certifications to nurses
  - Insurance reimbursement for FN services
  - Best practices in other state FN programs, including telehealth

## Findings and recommendations by section

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Sentara Rockingham Memorial Hospital Medical Center  
Grant Proposal to the Department of Criminal Justice Services (DCJS)

*“Too many of the ED staff are uncomfortable interacting with victims of sexual assault and they do not all know how to treat the physical and emotional symptoms of sexual assault while still preserving evidence. Most of the staff do not know how or are uncomfortable initiating a conversation about sexual assault with a potential victim or how to create a trauma-informed environment for patients. SANEs are not numerous enough to provide needed coverage.”*  
(page 34)

## Background

- US Bureau of Justice Crime Victimization Report (2018)
  - 400,000 sexual assaults reported to law enforcement
    - 60% not reported
  - 1.91 million domestic and intimate partner violence reported to law enforcement
    - 53% not reported
- 2018 Virginia Attorney General Annual Report on Domestic and Sexual Violence
  - 5,736 victims of sexual assault reported
  - 23,634 arrests for domestic and intimate partner violence

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## Forensic nursing is a subspecialty of nursing

### Patients are victims of a crime or criminal activity

- |  |                             |
|--|-----------------------------|
| • Sexual Assault <ul style="list-style-type: none"><li>– Adults</li><li>– Children</li></ul> | • Domestic Violence         |
| • Human trafficking  | • Intimate Partner Violence |
|  | • Elder abuse               |

- Largest subspecialty of forensic nursing is sexual assault
- Sexual assault exams
  - patients age 18 and above do not have to report to law enforcement
  - patients age 13 through 17 may be subject to reporting, determined by program (VA definition of sexual assault includes close-in-age exemption for 13-15 and 15-17)
- A sexual assault forensic exam can be with or without a Physical Evidence Recovery Kits (PERK) – VA Code § 19.2-11.5 et. seq.
  - law enforcement can approve non-PERK exams for patients ages 13 through 17
  - patient is responsible for cost of exam if PERK not used
  - patients can stop exam at any point; or decline any parts exam
- PERK can be submitted anonymously – VA Code § 19.2-11.6 (B), § 19.2-165.1
  - stored for 2 to 10 years at state lab
  - can report to law enforcement any time within storage period for investigation or prosecution
  - patients cannot be charged for a sexual assault forensic exam with a PERK, or the cost of collecting or storing a PERK

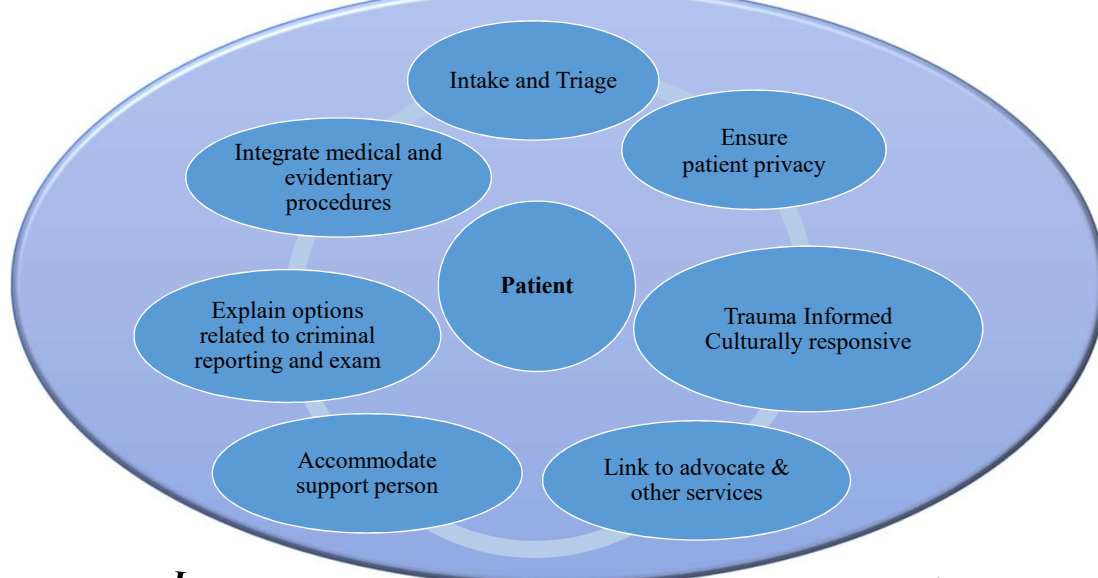
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## Forensic nurse exams link trauma informed health care with criminal justice

- Forensic nurses
  - reassure patients of their humanity
  - explain process and purpose of exam
  - address mental health needs
  - treat for disease prevention (sexually transmitted diseases, HIV) and unwanted pregnancy
- Exams may identify
  - injuries
    - including strangulation
  - patterns of domestic abuse
- Forensic nurses coordinate with
  - patient
  - family or friends
  - advocacy organizations
  - emergency medical providers
  - law enforcement
  - Commonwealth Attorneys
- Exams may involve
  - physical assessment
  - collection of physical evidence (PERK)
    - clothing
    - foreign materials on the body, hair
    - body swabs, and a blood or saliva sample for DNA analysis and comparison
  - documenting biological and physical findings such as physical injuries, either in writing or photographs
  - recording time and nature of the assault
  - preserving the collected evidence
  - providing appropriate treatment and referrals
- Commonwealth's Attorneys
  - use forensic exams during criminal trial and prosecution
  - combine exam reports with other evidence
  - call for expert testimony

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## Forensic Exam: Patient Centered Trauma Informed Care



**Insure patient safety during exam and prior to discharge**

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## Sexual assault by the numbers

### Nationally

- 82% of all juvenile victims (< 18) are female
  - 93% of juvenile victims knew the perpetrator
    - 59% acquaintances
    - 34% family members
    - 7% strangers
- 90% of adult rape victims (≥ 18) are female
  - 80% of rapes are committed by someone known to the victim
- 13% of women who are raped attempt suicide
  - 33% contemplate suicide
- 94% experience symptoms of post-traumatic stress disorder (PTSD) during the 2 weeks after the rape
  - 30% report symptoms 9 months after <sup>1</sup>
- 13% overall risk of acquiring an STD from a rape
  - 19.5% for bacterial vaginosis <sup>2</sup>

*“Research suggests that about two-thirds of college rapists are repeat offenders, who account for the great majority of rapes (over 90%), and about one-fourth of college rapists admit to committing rapes over multiple years of college.”*

*(James W. Hopper, Ph.D., Harvard Medical School; <https://www.jimhopper.com/sexual-assault-and-the-brain/repeat-rape-by-college-men/>)*

Sources: 1) Rape, Abuse & Incest National Network, National Sexual Assault Hotline. (RAINN.ORG, Call 800-656-4673 (HOPE) and 2) Thompson, Larry. “Infections after a rape” Washington Post. March 20, 1990. <https://www.washingtonpost.com/archive/lifestyle/wellness/1990/03/20/infections-after-a-rape/f3fbd283-e0f2-4dca-b3b4-28ed43628fb4/>

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## Intersection of Health Care and Criminal Justice

### Assaults and Exams

- 5,726 Sexual Assaults Reported to Virginia Police in 2017:
- ❖ 41.4% adults (≥18 years of age)
  - ❖ 58.6% children (<18)
  - ❖ 17% of reported sexual assaults involved a payment for PERK forensic exam
  - ❖ 39% of PERK are submitted anonymously each year
  - ❖ 6% of anonymous PERK have been released back to law enforcement since 2017 for prosecution

### Mental Health

- ❖ Emotional & Psychological
- ❖ Post-Traumatic Stress

### Sexual Health

- ❖ Unwanted Pregnancy
- ❖ Sexually Transmitted Disease
- ❖ Exposure to HIV

### Physical Health

- ❖ Injuries from Assault

### Criminal Justice System

Nationally - out of 230 sexual assaults reported to police:

- ❖ 20% lead to an arrest
- ❖ 3.91% referred to prosecution
- ❖ 2.17% felony convictions

Virginia –out of 2,370 Adult Sexual Assault Arrests

- ❖ 31% never prosecuted
- ❖ 42% no conviction for sexual assault

Source: JCHC analysis of information from US Bureau of Justice, Office of the Virginia Attorney General, Virginia Department of State Police, the Sexual Assault Forensic Exam (SAFE) program. And Rape, Abuse & Incest National Network, National Sexual Assault Hotline. (RAINN.ORG, Call 800-656-4673 (HOPE))

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## Adult (A) and/or Pediatric (P) Sexual Assault Nurse Examiners (SANE)

- Recommended training guidelines from the International Association of Forensic Nurses (IAFN), US Department of Justice and the American Nurse Credentialing Center (ANCC)
  - Registered Nurse (RN) or Advanced Practice Registered Nurse (APRN)
  - two years experience – preferably emergency, critical, and/or maternal child health
  - 41 hours of online training/classroom
  - 40 hours clinical experience with guidance of a physician, advanced practice nurse, or a SANE
  - may include court and law enforcement observation
- Once fully trained, a registered nurse can be
  - credentialed as a SANE-A and/or SANE-P
  - certified by the IAFN
- GAO Report on Training, Funding, and the Availability of Forensic Examiners (2016)
  - data is limited or unavailable for the
    - number of credentialed forensic nurse examiners
    - number of health care facilities performing forensic exams
- JCHC survey of forensic programs and nurses found
  - 96 to 155 trained forensic nurses in Virginia
    - 93,902 licensed Registered Nurses (VA Dept. of Health Professionals)
- Out of 122 licensed hospitals in Virginia (*CMS Provider Files*)
  - 16 hospitals provide sexual assault exams
  - 1 non-hospital based mobile forensic nurse service

*Credentialed/Certified forensic SANE nurses are recognized professionally by: American College of Emergency Physicians; Emergency Nurses Association; American Nurses Association; United States Department of Justice; State prosecutors; Law Enforcement*

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## Examples of states with forensic nurse training and supervision in state law

- Illinois Attorney General Office
  - 40 hours classroom
  - 8 hours clinical
  - Observation at Criminal Trial Proceedings
- Maryland Board of Nursing
  - 40 hours classroom
  - 40 hours clinical rotation - Board maintains a list of approved training locations
- North Carolina Board of Nursing
  - 40 hours classroom
  - 16 hours minimum clinical -Board maintains a list of approved training locations
- Texas Office of Attorney General
  - 80 hours training in approved program, includes clinical
  - 15 pelvic exams
  - 16 hours courtroom observation

*(MA, NJ and KY also have state forensic nurse training requirements in state law)*

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## SANE training in Virginia

- Provided at hospitals or programs where forensic nurses are employed
- Generally follow the IAFN recommended guidelines and the Forensic Nursing Core Curriculum
  - 40 hours of didactic (classroom)
  - clinical (supervised, instructional exams)
- Virginia colleges and universities may offer classes but none offer training that satisfies guidelines
- one online forensic college offers SANE classroom training as part of advanced degree in nursing (Masters, PhD.)
  - Duquesne University (<https://onlinenursing.duq.edu/>)
- Forensic nurse education is not recognized by higher education, education programs are not tracked
  - no federal “Classification of Instructional Program” code
  - no approved curriculum
- Use of online training depends on program
  - free tribal training course - limited availability throughout the year
  - IAFN training courses - \$350 (IAFN member) or \$500 (nonmembers) for adult and \$450 (member) or \$600 (nonmember) for pediatric
- JCHC survey found that clinical training can take between 2 months to a year, or longer, to complete
  - length of training depends on employment status of nurse – full, part time, or a PRN (as needed)
  - patient volume
  - clinical training requirements depend on hospital or program
    - 10 to 50 supervised pelvic exams
    - some require court observations
    - some require “ride-alongs” with police
  - hospitals and programs generally cover costs of nurse training

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## Virginia should establish training standards for forensic nurses

### Recommendation 1.

- a. Make forensic nursing official - the General Assembly should create a subcategory of forensic nurse examiner in nursing law by amending § 54.1-3000
- b. Standardize training - the Board of Nursing should create a forensic nurse examination training task force to standardize the training requirements for forensic nursing; standards should include grandfathering of existing forensic nurses and those in training at the time of standards adoption
- c. Establish criteria for school - the State Council of Higher Education for Virginia (SCHEV) and task force should create criteria for nursing schools that offer forensic nursing programs and create a list of approved locations and programs where forensic nurse education and training can be obtained

### Suggested Forensic Nurse Examination Standards Task Force Members

Virginia Victim Fund's Sexual Assault Forensic Exam (SAFE) program	Office of the Attorney Generals
Virginia Hospital and Health Care Association	Department of Medical Assistance Services
The Commonwealth's Attorneys Services Council	State Council of Higher Education for Virginia
Department of Criminal Justice Services	Others
Virginia Chapter of the International Association of Forensic Nurses	

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### A current list of hospitals that perform forensic examinations does not exist

- Knowledge of programs are based on an informal network of forensic nurses, Commonwealth's Attorneys and a list posted on the IAFN website
- JCHC analysis identified
  - 16 hospitals providing various forensic nursing medical exam services
    - both adult and pediatric sexual assault, domestic and intimate violence, human trafficking, elder abuse
    - 1 hospital only provides pediatric forensic nurse services
  - 1 non-hospital based mobile forensic nursing service
    - 13 hospitals along the eastern shore
  - Programs start with sexual assault and expand into other services - child sexual assault and abuse, domestic violence
- 11 of the 16 forensic medical exam hospitals have Trauma Care designations
  - 8 of the 19 Trauma Care hospitals in Virginia do not offer forensic examinations

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### Virginia Forensic Nurse Services – Hospitals and Mobile Program

Forensic Hospital Programs	Trauma Center Designation	City
Augusta Regional SANE Program		Fishersville
Bon Secours Richmond Forensic Nursing Services (6 Bon Secour Hospitals)		Richmond
Carilion Health System Clinical Forensic Nurse Examiners	Level I Adult	Roanoke
Carilion Franklin Memorial Hospital	Level I Adult	Rocky Mount
Carilion New River Valley Medical Center	Level III Adult	Christiansburg
Centra Forensic Nurse Examiners	Level II	Lynchburg
INOVA Ewing Forensic Assessment and Consultation Teams (FACT)	Level I	Falls Church
Mary Washington Hospital	Level II	Fredericksburg
Riverside Health System Forensic Nurse Examiner Program	Level II	Newport News
Sentara Rockingham Memorial Hospital Sexual Assault Nurse Examiners		Harrisonburg
Sentara CarePlex Hospital		Hampton
Sentara Northern Virginia Medical Center		Woodbridge
UVA - University of Virginia Forensic Nurse Examiners	Level I Adult	Charlottesville
VCU Medical Center/MCVH Hospitals Forensic Nurse Examiners	Level I Adult	Richmond
Winchester Medical Center	Level II Adult	Winchester
Children's Hospital of King's Daughters(CHKS) - Pediatric Forensic Nurse Examiners	Level I	Norfolk
Chesapeake Forensic Specialists office – Mobile Services for 13 eastern shore hospitals		
<i>Source: JCHC analysis.</i>		

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## Access to forensic nurse examinations is limited due to a lack of availability

- Staffing forensic nurse programs is a challenge
  - hospitals employ part time, full time and PRN (as needed) nurses
  - hospitals may not have a nurse available
    - vacant positions, nurses in court, limited staff available for on call calendar
- Hospitals do not have a formal referral protocol
  - including hospitals with a forensic nurse program
- Patients, law enforcement and EMS requesting a forensic exam may
  - be turned away
  - travel to more than one hospital seeking an exam, or
    - patients may be discouraged from getting an exam

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- Law enforcement agencies report being turned away from hospitals when seeking a forensic exam

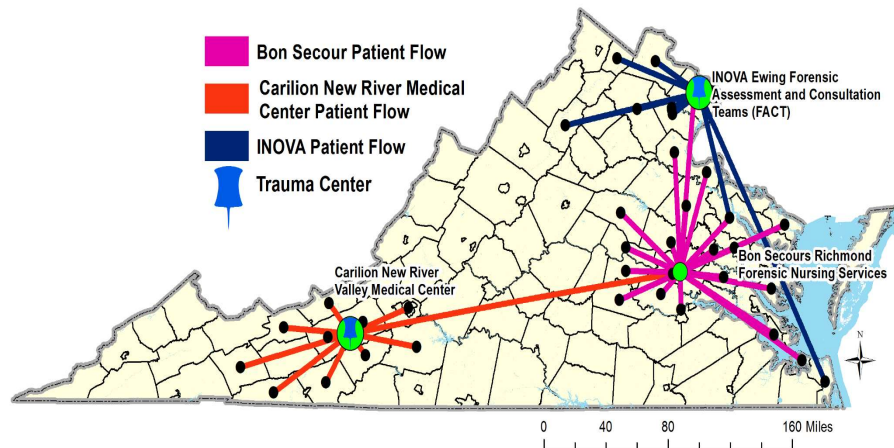
Law Enforcement Survey	Reponses
Number that reported being sent away	13 of 34
• no staff on duty	10
• do not do forensic exams	3
No assistance finding another hospital	8
Went to more than one hospital	7
<i>JCHC survey of Virginia sheriffs and police departments (May/June 2019); 34 (20%) of the 169 law enforcement agencies responded</i>	

- EMS destination data reviewed to determine if the reason for the call was clearly a sexual assault or domestic violence incident
  - 16 hospitals were identified and surveyed to determine if they performed forensic examinations

Hospital survey based on EMS Ambulance Destination Data	Responses
Number of hospitals responding to survey concerning availability of forensic exam	9 of 16
• Reported no forensic nurse program	9
Hospitals that refer patients to other hospitals	7
Hospital that transfer patients but will collect evidence if necessary	1
Programs that call in a SANE Nurse to do the exam	1
<i>Source: JCHC analysis of VDH Office of Emergency Medical Services data.</i>	

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## Patient-tracking - from location of assault to a forensic exam program -



Source: JCHC analysis of 2018 SAFE payment claims.  
Map prepared by Virginia Department of Health

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## If you build it.....

- In 2016 Fairfax INOVA
  - changed program, converting forensic nurses from part-time to full-time
  - exams increased 52%
- Office added in Loudon County, 2018
  - number of exams increased 87.43%
  - domestic violence forensic exams increased 500%

Fairfax INOVA Loudon County Office Opened April-2018 - Forensic Exam Patient Originating in Loudon County -			
	2016	2018	% Change
Total Number	74	139	87.83%
Domestic Violence	5	30	500%

Fairfax INOVA Forensic Nurse Program Annual Change Before and After Converting P/T Forensic Nurses to F/T in 2016			
Type of Exam	2015	2018	Percent Change
Adult Acute Sexual Assault	221	294	33%
Domestic Violence	66	141	114%
Pediatric Acute Sexual Assault	72	139	93%
Pediatric Chronic Sexual Assault *	96	137	43%
Child Abuse	69	69	0%
Follow up & Suspect Exams	89	154	73%
<b>Totals</b>	<b>613</b>	<b>934</b>	<b>52%</b>

\* Chronic pediatric exams (non-acute) - assault occurred outside of the timeframe for evidence collection but something forensically significant, e.g. a sexually transmitted infection or old injury, can be found or identified.

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- In 2017 University of Virginia
  - changed staffing and added services
  - exams increased 129%
- In 2014 Augusta Regional
  - added services
  - exams increased 112%

University of Virginia Forensic Nurse Examination Program, 2016 to 2018					
	2016	2017	2018	Change from 2016	Percent Change
Sexual assault	63	80	98	35	56%
Child sexual abuse	9	40	69	60	667%
Child physical abuse	0	20	30	30	100%
Elder abuse	0	2	3	3	100%
Domestic Violence	0	29	64	64	100%
Strangulation	0	16	37	37	100%
Follow-up exams	0	16	33	33	100%
<b>Total Exams</b>	<b>72</b>	<b>203</b>	<b>334</b>	<b>262</b>	<b>129%</b>

Augusta Regional SANE Program Changed Services in 2014						
	2013	2014	2015	2016	Change: 2013 to 2016	Percent Change
Sexual Assault	28	31	32	50	22	79%
Child Sexual Assault	23	20	17	25	2	9%
Strangulation	0	6	15	33	33	100%
<b>Total</b>	<b>51</b>	<b>57</b>	<b>64</b>	<b>108</b>	<b>57</b>	<b>112%</b>

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## Hospitals need a forensic nurse exam referral protocol

### Recommendation 2.

- The General Assembly should amend the hospital licensing code to require hospitals to
  - have a forensic nurse examiner protocol
  - maintain a referral call list
  - identify hospitals with forensic nursing services with an indicator on license renewal applications
  - train employees on the protocol

- *Suggested amendment: Va. Code § 32.1-127(B).*

\_\_\_\_\_. Shall require that each hospital establish patient-centered trauma informed protocols for the screening, admissions, treatment, and transfer of patients seeking any type of forensic examination related to sexual assault, intimate partner or domestic violence, human trafficking, or adult or child abuse; that all employees of emergency departments receive training appropriate to the needs of the patient and that such training be based on a trauma-informed approach in identifying and safely addressing situations involving the safety and privacy of the patient and his needs; that, as part of the protocol, each hospital provide to each person requesting or presenting or whose screening indicates a sexual assault forensic examination an information sheet for sexual assault patients that includes information on (i) informed consent, (ii) a description of the medical forensic examination, including costs and reimbursements for medical forensic examinations, (iii) an explanation of the choice to report to law enforcement and examination options, (iv) the risks of contracting a sexually transmitted infections, (v) Pregnancy risks, (vi) information about the Virginia Victim Fund, including a contact information and email address, and (vii) information about advocacy support, including contact information and email addresses to advocacy centers.

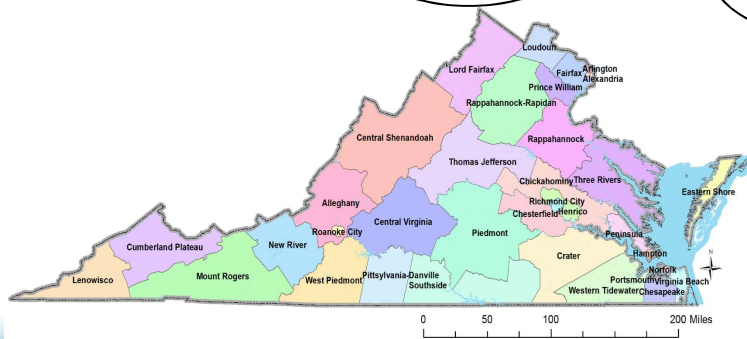
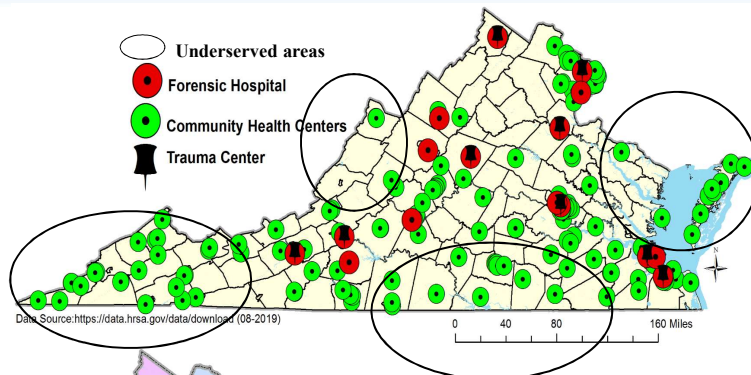
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## Follow-up medical forensic exam

- Follow-up exams are necessary
  - final determination of injury or illness
  - mental health treatment / post traumatic stress
  - monitor antibiotic treatment for sexually transmitted diseases
  - monitor HIV prevention medications
  - monitor unwanted pregnancy
- JCHC analysis found
  - referrals for primary care physicians
    - patient privacy concern
    - confusion over appointment
  - transportation back to hospitals not feasible
  - difficulty locating free clinics
  - appointment delays discourage use of local health departments and community health centers

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- Location of forensic exam programs
  - the hospitals and those designated as trauma centers
- Location of underserved areas
  - Community health centers and local health departments may
    - provide needed follow-up care
    - provide exam room for mobile forensic nurses



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## Local health care providers should be part of the Sexual Assault Response Teams (SART)

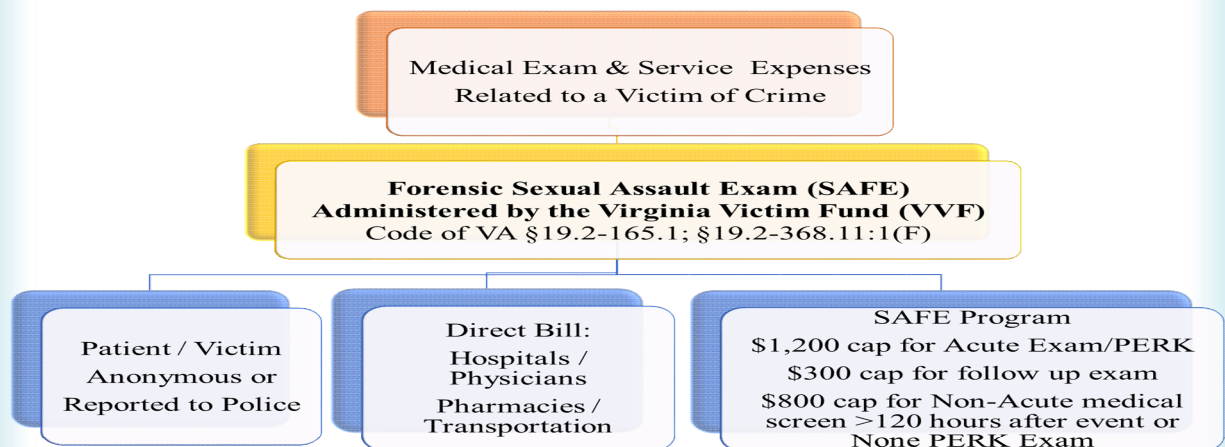
- SARTs are created by Virginia Code § 15.2-1627.4
  - led by Commonwealth Attorneys, required to meet annually
  - purpose is to develop a comprehensive and trauma-informed response for sexual assault victims
  - SART team members are listed in Code
    - forensic nurse examiner or provider that performs PERK in the jurisdiction
- Department of Criminal Justice Survey of SART Members (2018)
  - 171 responses
    - 7% identified as “other” medical providers
    - 59% knew of SART meetings
    - 50% met more than once a year
    - 25% reported jurisdiction did not have meetings, 13% did not know

### Recommendation 3.

The General Assembly should add other health care providers to the SART Teams by amending and adding local health departments (VA Code § 32.1-30, et. seq.), administrators from licensed hospitals (VA Code § 32.1-123); and community health centers (CFR 42 CFR 491.1) to the Sexual Assault Response Teams (VA Code § 15.2-1627.4)

- improve provider communication
- open up treatment opportunities for patients

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SAFE Program: Prescriptions and transportation are not included in the \$1200, \$800, and \$300 Memorandum of Agreement (MOA) rates. Prescriptions are paid in full (after consideration of any insurance billing). Separate MOA rates with transportation providers, typically reimbursing at a rate of 60%-70% of charges.

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## SAFE payments for sexual assault exams

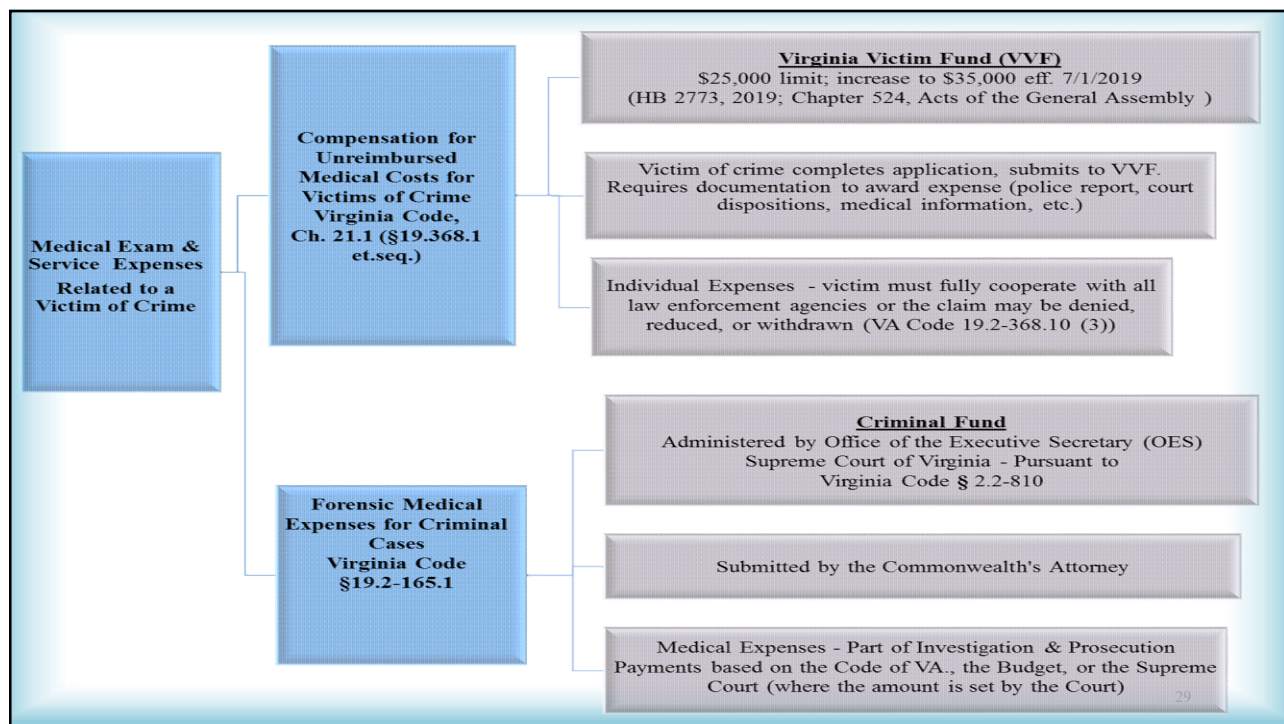
- In 2018 the SAFE program paid \$1.44 million
  - 1,513 claims for 968 patients
    - vacant position within program delayed \$400,000 in provider payments until 2019
- Patients incur no cost for sexual assault exams
  - exam has to be within 120 hours of assault
  - assault occurred in Virginia
  - must include PERK
  - anonymous or report to police, or authorized by Commonwealth Attorney
- Patients incur no cost for follow up exams
  - must be directly related to initial exam
  - or authorized by Commonwealth Attorney if reported
- Patient is responsible for all costs
  - after 120 hours unless reported and authorized by Commonwealth Attorney
  - exam does not include PERK
  - treatment of injuries, even if they occurred during assault
  - treatment of existing medical conditions, even if made worse by assault
  - follow-up appointments, medications, lab work not directly related to initial forensic exam
  - medications filled after forensic exam
  - counseling

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## Limited access to other sources of funds for sexual assault patients

- The Virginia Victim Fund (VVF) administered by WCC
  - requires report to police and cooperation with investigation
  - requires patient to apply and submit medical expenses
- Anonymous PERK
  - 39% of sexual assault exams
  - eliminates the ability of a patient to access VVF
  - patient is responsible for medical bills not covered by SAFE program
- No PERK Exam
  - eliminates providers from filing a SAFE claim unless patient reports to police
  - or authorized by Commonwealth's Attorney
- Of the 968 unique patient claims paid by SAFE program (2018)
  - only 77 (8%) filed claims from other victim funds
- The Criminal Fund administered by Office of Executive Secretary of Supreme Court
  - authorized by Commonwealth's Attorney
  - medical evidence necessary to establish a crime has occurred
    - (e.g. additional x-rays, diagnostics), not including evidence collected through PERK

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## Sexual assault patients should not be responsible for medical bills

### Recommendation 4.

The General Assembly should amend VA Code § 19.2-368.10 and § 19.2-368.11:1 to allow victims of sexual assault to access victim funds for all medical expenses whether a victim chooses to report a sexual assault to law enforcement, or not, and whether the victim chooses to have an exam without a PERK



## Billing Third Parties and Dependent Coverage

- Billing and claims for SAFE program payments
  - Medicaid, Medicare, Tri-Care must be billed first
    - 51% of patient claims involved payment from other coverage
  - other medical expenses are responsibility of patient
  - health claims processed from an emergency room use general billing codes
- Explanation of Benefits (EOB)
  - sent to policy holders not person receiving covered medical services
  - VA Code § 38.2-3407.4 (explanation of benefits) does not protect patients who are victims of assault, violence or abuse
- Spouse, and children through age 26, covered by another person
  - college students
  - domestic / intimate partners
- DMAS contract with health plans requires EOB or member survey as part of program integrity
  - JCHC requested survey of Medicaid Managed Care Plans
    - plans used combination of EOBs and member surveys
    - one plan reported not sending EOBs to members in general
    - some plans reported that claims with sensitive information are suppressed

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## Privacy and Fear

- College students do not want parents or others to know
  - refuse exam
  - may only request prevention services (e.g., sexually transmitted diseases, unwanted pregnancy)
- Victims of domestic and/or intimate partner violence
  - refuse services out of fear
- Virginia law on EOBs needs to be updated
  - reflect coverage of adult dependents
  - recognize privacy needs of victims of assault and abuse
- HIPAA provides for a right to request restriction (45 CFR § 164.522)
  - individual can request restrictions on protected health information for treatment, payment, or use & disclosure
  - state law can require carriers to accept a request through use of a common form

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## Examples of states with EOB laws that protect patient privacy

- California (SB 138, 2013)
  - allows covered individuals to submit a “confidential communications request” to their health insurer
  - requires insurers to comply if the request involves sensitive services defined by the law, such as sexual assault services, and/or if the information that might be revealed could endanger the patient
- Maryland (SB 790, 2014)
  - permits patients to submit a form developed by the Insurance Commissioner that requests EOBs go to an alternative address
- Massachusetts (S. 2296, 2018)
  - permits patients to require their insurance carriers to send their medical information only to them as opposed to the policyholder
  - requires insurance carriers to use a common summary of payments form to be developed by the Massachusetts Division of Insurance
  - if no further payments are required a person may request that a common summary of payments form not be sent for specific services or procedures

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## Virginia EOB laws need to be updated to protect patient privacy

### Recommendation 5.

The General Assembly should amend Virginia Code § 38.2-3407.4 and § 38.2-4320.1 by requiring the Bureau of Insurance to establish regulations, and the Department of Medical Assistance to require in its contracts with managed care companies, that covered individuals and members receiving health services can choose a preferred method of receiving the explanation of benefits form from their insurer as permitted by 45 CFR § 164.522; restrict information contained in the EOB if it contains a description of sensitive services. Authorize The Bureau of Insurance to define sensitive health care services, consulting with experts on infectious disease, reproductive and sexual health, domestic violence and sexual assault, mental health, and substance use disorders.

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## Low reimbursement, confusion, lack of hospital support for forensic nursing programs

- Claims are not handled like medical claims
  - reimbursement rates not set by rule or publicly posted
  - labor intensive and cumbersome
    - fax, mail and email
  - payment delays due to incomplete paper work
  - majority of nurses do not understand follow-up care reimbursement
  - nurses train each other on how to bill
    - one group of nurses spent 2 days at another program learning how to bill
  - other health care providers may not be aware they can be reimbursed for providing follow-up care
- Majority of hospital administrators do not support forensic nurse examiner program
  - high cost
  - low patient volume
  - one hospital reported “reimbursement is so low and complicated it is not worth the administrative time to figure it out”
  - one hospital reimbursement office did not know the agency they billed
- Forensic nurses write grant proposals for
  - equipment
  - program changes
  - expanded services

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## Current SAFE program reimbursements do not reflect actual cost

Description of Current Program	SAFE Payment
Acute medical forensic exam – within first 120 hours with PERK	\$1,200
Non-Acute medical forensic exam – after 120 hours, authorized by Commonwealth Attorney	\$800
Follow-up forensic exam	\$300
Transportation covered for travel to initial forensic exam but not follow-up Medications for STI, unwanted pregnancy and HIV post prevention covered at time of exam	Memo. of Agreement with providers / vouchers

- Current payments do not cover
  - entire cost of sexual assault exam
  - entire cost of follow-up exam and
  - court requirements of forensic nurses (e.g. consult with prosecutors, attorneys, testify)
- All forensic nurse programs reported
  - exams last between 4 and 6 hours, up to 12 hours
  - condition of the patient lengthens exam time
  - involvement of support person(s) adds to time

*The following slide provides details of a medical forensic exam and estimated actual costs*

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Detailed medical forensic nurse exam time and estimated actual cost				
	Exam and Court Time (Minutes) / Hours			
Pre and Actual Exam	Initial Exam	Follow Up Basic	Follow Up HIV	Court
Respond / consult advocate / consult law enforcement / set up room / register patient	(47)			
Intake & patient consultation (condition of patient, presence of support)	(60)	(40)	(40)	
Physical exam / evidence collection	(60)	(20)	(5)	
Medication administration and discharge instructions	(40)	(15)	(15)	
Patient/advocate consultation	(15)			
Billing paperwork and medical electronic health record input	(25)	(25)	(25)	
Subtotal exam time – (minutes) / hours	(247) / 4.12	(100) / 1.66	(85) / 1.41	
Post exam				
Complete medical legal report	(45)	(15)	(15)	
Call patient with lab results	(15)	(10)	(10)	
Peer review of medical legal report	(130)	(40)	(35)	
Release evidence to law enforcement	(10)			
Subpoena / court preparation / attorney consultation				(140)
Court				(120)
Subtotal post exam time – (minutes) / hours	(200) / 3.3	(65) / 1.1	(60) / 1.0	
<b>Total time in (minutes) / hours</b>	<b>(447) / 7.45</b>	<b>(165) / 2.76</b>	<b>(145) / 2.41</b>	<b>(260) / 4.33</b>
Hourly Cost of Nurse Time in an Emergency Room	\$378.98	\$378.98	\$378.98	\$378.98
<b>Estimated Cost</b>	<b>\$2,823.40</b>	<b>\$1,045.98</b>	<b>\$913.34</b>	<b>\$1,640.98</b>
Source: JCHC analysis of data provided by INOVA Ewing Forensic Assessment and Consultation Teams (FACT); Bureau of Labor Statistic compensation reports, American College of ER Physicians fact sheet and MarketRealist.com hospital data.				

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## Impact of increasing reimbursements for forensic exams

- May incentivize program development in underserved areas of the state
  - may improve hospital administrative support
  - improve access to care and treatment
  - encourage Community Health Centers to
    - provide forensic exams
    - Follow-up care
 (see appendix for description of Community Health Centers)
- Increasing reimbursements will increase federal Victims of Crime Act (VOCA) formula grant
  - SAFE claim payments are part of the calculation for the formula grant

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## SAFE program reimbursements should be increased

### Recommendation 6.

Increase reimbursement to estimated actual cost

- acute exam \$2,823
- non-acute (no PERK) \$1,560
- follow up \$1,046
- HIV follow up \$913 (if necessary)
- court requirements \$1,641

Alternative recommendation using hospital inflation adjustment

- acute exam \$1,773
- non-acute \$1,183
- follow up \$443
- court cost should be added

Source: <http://www.in2013dollars.com/Hospital-services/price-inflation/2010-to-2019?amount=1200>

- Workers Compensation Commission (WCC) approved SAFE administrators to pursue rate increases with Virginia Supreme Court and Department of Planning and Budget (August 27, 2019)
  - acute exam \$2,900
  - non-acute (no PERK) \$1,800
  - follow up \$1,500
- Fiscal impact \$6 million
- Proposal also includes: explore payment of injuries at time of assault, include 5 trauma-informed counseling sessions consistent with Virginia Victim Fund

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## Claims should be processed like medical claims

- Patient and provider friendly
  - electronic filing and payment process by health care providers
  - modifier designating forensic nurse examine
  - appropriate level of reimbursement
  - suppress EOB
  - provider training
- Department of Medical Assistance Services
  - expertise in processing medical claims
  - coordinates benefits with third parties
  - has extensive access to health care provider community for outreach and training
  - can suppress EOBs electronically
  - currently administers 2 state programs: Temporary Detention Order (TDO) and Uninsured Medical Catastrophe Fund

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## Implementation work group should be created to determine feasibility of moving SAFE program and improving claims processing

### Recommendation 7.

The General Assembly, through a budget amendment, should create an Implementation Work Group to determine the feasibility of transferring the SAFE program and all medical expenses related to sexual assault, strangulation, intimate partner and domestic violence, human trafficking, and adult or child abuse from the Virginia Workers Compensation Board to the Department of Medical Assistance Services.

The Implementation Workgroup should include members from the Office of the Attorney General, The Secretary of Health and Human Resources, the Secretary of Public Safety and Homeland Security, the Office of the Executive Secretary of the Supreme Court, the Workers Compensation Commission, Department of Medical Assistance Services, Department of Criminal Justice Services, Department of Planning and Budget.

In consideration of transferring the program, the workgroup shall create an efficient, seamless electronic medical claim processing system for hospitals and health care providers that coordinates payments from all fund sources, suppresses EOBs and removes patient from medical billing process. The Implementation Workgroup shall present a report with any necessary statutory changes and budget requirements to the Governor, the Chairman of the House Appropriations Committee and the Senate Finance Committee by September 1, 2020, for consideration in the Executive Budget for SFY-2021.

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## Policy options based on recommendations and findings

Policy Option	Description	Slide
1	Introduce legislation to amend the Code of Virginia § 54.1-3000 and create a subcategory of forensic nurse examiner in nursing law; standardize training; and create criteria for nursing schools that offer forensic nursing programs.	14
2	Introduce legislation to amend the Code of Virginia § 32.1-127(B) and require hospitals to have a forensic nurse examiner referral protocol.	22
3	Introduce legislation to amend the Code of Virginia § 15.2-1627.4 and add hospital administrators, community health centers (CFR 42 CFR 491.1), and local health department administrators to the Sexual Assault Response Teams.	25
4	Introduce legislation to amend the Code of Virginia § 19.2-368.10 and § 19.2-368.11 to allow patients receiving a forensic medical exam to access funds for all medical expenses.	30
5	Introduce legislation to amend the Code of Virginia § 38.2-3407.4 and § 38.2-4320.1 requiring the Bureau of Insurance to establish regulations to protect the privacy of patients who are dependents and can consent to their own care as permitted by 45 CFR § 164.522.	34
6	Introduce a budget amendment to increase the reimbursement rate for forensic exams and to improving the reimbursement process for health care providers.	39
7	Introduce a budget amendment to create an Implementation Work Group to determine the feasibility of transferring the Sexual Assault Forensic Examination (SAFE) program and all medical expenses related to forensic medical examinations from the Virginia Workers Compensation Commission to the Department of Medical Assistance Services.	41

## Public Comment Slide

Written public comments on the proposed options may be submitted to JCHC by close of business on September 25, 2019.

Comments may be submitted via:

❖ E-mail: [jchcpubliccomments@jhc.virginia.gov](mailto:jchcpubliccomments@jhc.virginia.gov)

❖ Fax: 804-786-5538

❖ Mail: Joint Commission on Health Care

P.O. Box 1322

Richmond, Virginia 23218

Comments will be provided to Commission members and summarized before they vote on the policy options during the JCHC's November 14<sup>th</sup> decision matrix meeting.

(All public comments are subject to FOIA release of records)

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## APPENDIX I

### Court transfers are the source of funds for SAFE program

Budget Bill - HB1700 (Chapter 854, 2019)	Amount of Transfer
Circuit Courts (Item 40.3)	\$880,000
General District Courts (Item 41.E.)	\$40,000
Juvenile and Domestic Relations (Item 42.E.)	\$870,000
Combined District Court (Item 43.E.)	\$95,000
<b>Total</b>	<b>\$1,885,000</b>

- 6-month vacancy at WCC within SAFE program caused delays and backlog of \$400,000 of provider payments in 2018
  - backlog eliminated during 2019

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## APPENDIX II

### Community Health Centers are primary care facilities

- Community Health centers
  - created by Section 330 of the Public Health Services Act
  - safety-net providers designated by HRSA and CMS
  - serve underserved areas of state
  - required services
    - comprehensive, culturally competent, primary health care
    - integrated access to pharmacy products
    - mental health, substance use disorder
    - dental and oral health
    - may provide telemedicine
- Reimbursements
  - special PPS rates for Medicare and Medicaid beneficiaries
  - access to 340B Drug Pricing Program
  - private insurance
  - federal HRSA grants



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- |                      |                          |
|----------------------|--------------------------|
| ◆ Family Health Care | ◆ Women's Health Care    |
| ◆ Geriatric Care     | ◆ Black Lung Services    |
| ◆ Pediatric Care     | ◆ 24-Hour Emergency Care |
| ◆ Phone Access       | ◆ Laboratory Services    |
| ◆ Patient Education  | ◆ Home Visits            |

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## APPENDIX II (cont.)

### Community Health Center: Southwest Virginia Community Health Systems in Saltville provides sexual assault exams for children

- Approached by local Child Advocacy Center (CAC) to do sexual assault exams in children, but not adults
  - serve Washington and Smyth Counties in VA
  - taking referrals from the local child advocacy centers
- 3 providers trained with CAC grant money in 2018
  - 2 family medicine and 1 pediatrician
- Perform
  - non-acute pediatric exams, PERK if indicated but rare
  - urgent exams if brought in during regular office hours
  - Follow-up exams
    - STD treatment
    - HIV prophylaxis
- Non-office hour referrals to Nicewonger Children's Hospital (Tenn.) or to New River Valley Medical Center (VA.)
  - both 1.5 to 2 hours away
- Members of the local interdisciplinary meeting on child sexual assault cases
- Trained on billing the victims compensation fund
  - most cases are covered by Medicaid

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### APPENDIX III

#### Initial cost to establish a program

- Sentera RMH Medical Center, Harrisonburg
  - restart program
  - grant proposal to DCJS
  - Victims Services Grant Program (VSGP)
  - 2-year funding, competitive
  - 1 year to submit grant, train director
  - approximately 1 year to train 6 PRN nurses
- Sentera RMH
  - \$164,869 from DCJS for each year
- VSGP
  - competitive grant program
  - 85 grantees, \$36 million awarded

Proposal Sentera Rockingham Memorial Hospital (RMH) Medical Center, Harrisonburg Grant Proposal to Re-Establish Sexual Assault Examiner Program (2019)			
	Federal	Local Match	Total
Personnel 1 FT Director 6 PRN Nurses	\$140,398	\$101,013	\$241,410
Consultants	10,000	0	10,000
Travel	5,092	116	5,208
Equipment (available from prior program)	0	0	0
Supplies	6,000	0	6,000
Indirect Costs	16,149	0	16,149
Total	\$177,639	\$101,129	\$278,768
<i>Basic equipment for forensic exams: camera equipment (\$100 to \$1,000), alternative light source for detecting bruising noted under the skin, biological fluids (\$200 to \$500), colposcope (\$5,000 to \$12,000)</i> <i>Source: DCJS</i>			

### APPENDIX IV

#### Illinois Comprehensive Sexual Assault Act (HB 5245, 2018)

- Requires
  - medical forensic exam for sexual assault survivors (if assault occurred within 7 days)
    - done by “Qualified Medical Provider” (QMP) – trained as a sexual assault nurse examiner or sexual assault forensic examiner
    - SANE training for the nurses provided free by Office of Attorney General
  - only SAFEs and SANEs can collect evidence using sexual assault kit
  - pediatric patients (under 13) - QMPs must be child abuse pediatricians or pediatric SANEs
  - QMP must be available within 90 minutes from a patient arrival
  - QMP requirement for hospitals begin January 1, 2022
- Every provider doing a medical forensic exam needs to offer photo documentation of injuries
- All licensed hospitals are required to
  - create areawide and hospital based sexual assault treatment plan
  - choose a classification
    - treatment hospital – adult and pediatric medical forensic services
    - treatment hospital with approved pediatric transfer - adults and adolescents, transfer pediatric patients after a screening exam and stabilization
    - transfer hospital - medical screening exam and appropriate stabilization, patients are transferred for forensic medical exam
- All emergency room clinical providers required to do 2 hours of sexual assault training, repeated every 2 years



APPENDIX V  
HOUSE JOINT RESOLUTION NO. 614

WHEREAS, forensic nurses are registered nurses or advanced practice nurses who have received additional education and training to work in a variety of fields, including sexual assault, domestic violence, child abuse and neglect, elder mistreatment, human trafficking of minors and adults, death investigations, and corrections, and in the aftermath of natural disasters; and

WHEREAS, there are currently more than 4,000 members of the International Association of Forensic Nurses in over 25 countries; and

WHEREAS, certain forensic nursing programs in the Commonwealth employ full-time forensic nurses, while others provide full coverage, coverage only as needed, or limited coverage hours, and the majority of forensic nursing programs are based in hospitals; and

WHEREAS, there are approximately 14 forensic nursing programs in the Commonwealth and forensic nurses from the Bon Secours Greater Richmond program alone examined over 2,300 individuals in 2017; and

WHEREAS, forensic nurses aid in anti-violence efforts and collect critical evidence for law enforcement, in addition to providing testimony used to prosecute perpetrators of violent and abusive acts; and

WHEREAS, many programs operate at a financial loss due to the limited reimbursements offered for physical evidence recovery kits and costs associated with providing testimony; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission be directed to study forensic nursing in the Commonwealth.

In conducting its study, the Virginia State Crime Commission (the Commission) shall (i) identify all existing forensic nursing programs in the Commonwealth, including graduate programs and certifications; (ii) determine geographic regions of the Commonwealth in which forensic nursing programs or forensic nurses do not currently exist and determine what coverage is available in those regions, if any, and whether coverage is provided from neighboring regions; (iii) identify the current funding sources for existing forensic nursing programs and estimate the costs associated with and potential funding sources for establishing forensic nursing programs in geographic regions across the Commonwealth with a current gap in coverage; (iv) analyze and provide an estimate of the average costs associated with collecting forensic evidence and providing testimony in a court of law and identify funding sources for testimony costs; (v) review the current forensic nursing workforce in the Commonwealth and identify opportunities to increase availability of forensic nursing certifications to nurses; (vi) consider insurance reimbursement opportunities for forensic nursing services performed; and (vii) evaluate existing forensic nursing programs in other states and identify best practices, including telehealth, that could be utilized in the Commonwealth.

Technical assistance shall be provided to the Commission by the Virginia Department of Health Professions and the Virginia Board of Nursing. All agencies of the Commonwealth shall provide assistance to the Commission for this study, upon request.

The Virginia State Crime Commission shall complete its meetings by November 30, 2019, and the chairman shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2020 Regular Session of the General Assembly. The executive summary shall state whether the Commission intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

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