



You Can Get Health Care or Release a Rape Kit After a Sexual Assault

You get to decide if you will go to the hospital to see a doctor after a sexual assault. You do not have to ask your guardian or anyone else if you can go to the hospital.

You can decide whether evidence of the assault is collected at the hospital – some people call this a rape kit.

You get to decide whether the hospital gives the rape kit to the police. The police will take the rape kit to a crime lab to look for evidence.

If you can't give consent, your guardian, health care surrogate or health care power of attorney may be asked. If that person can't be reached or will not release the information, the police officer may release the information.

Background

In the past, sometimes a victim had a guardian who was unavailable or unwilling to agree to health care or release evidence.

To fix this problem, the law was changed to protect your rights. [410 ILCS 70/5](#).

The law changed because of the work of self-advocates. They worked with:

- Illinois Imagines Project
- Illinois Department of Human Services
- Illinois Coalition Against Sexual Assault
- Other groups that help people with disabilities

Questions?

Illinois Coalition Against Sexual Assault
217.753.4117
www.icasa.org

Illinois Department of Human Services
Domestic Violence & Sexual Assault Unit
217.558.6192 or teresa.tudor@illinois.gov



Access to Health Care and Evidence Collection for Sexual Assault Victims with Disabilities

Current Law

Consent of a guardian, health care surrogate or health care power of attorney is not required in order for a victim with a disability to receive health care or release forensic evidence following a sexual assault.

If a victim with a disability is unable to consent to the release of evidence, and the victim's guardian, health care surrogate or health care power of attorney is unavailable or unwilling to release the information, an investigating law enforcement officer may release the evidence.

Decisional Capacity

A physician (not a team of professionals) decides whether the victim with a disability has "decisional capacity," or the ability to make decisions about her own health care and releasing evidence. The physician makes a decision after having a conversation with the victim and exercising professional judgment.

Background

Prior to January 1, 2010, when an adult with a disability who had a guardian over his/her health care went to a hospital after a sexual assault, only the victim's guardian could consent to the health care and release the forensic evidence collected at the hospital.

Sometimes a victim with a disability had a guardian who was unavailable or unwilling to consent to health care or release forensic evidence.

To remedy this problem, the Sexual Assault Survivors Emergency Treatment Act (SASETA) was amended to protect the personal autonomy and choice of a sexual assault victim with a disability in receiving emergency health care services and releasing forensic evidence. [410 ILCS 70/5\(b\)](#).

The change to the law is the outcome of the Illinois Imagines Project, a collaborative among the Illinois Department of Human Services, the Illinois Coalition Against Sexual Assault, and self-advocates for people with disabilities.

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You Decide Who Looks At Your Rape Crisis Center Records

Your records at a rape crisis center are absolutely private even if you have a guardian. You control who looks at your rape crisis center records. You do not have to tell anyone what you talk about with your counselor.

You can decide if your guardian can look at your rape crisis center records.

You can give up the right to keep your rape crisis center records private if you think it will help you to let someone else (like a lawyer or a social worker) see your records.

If a judge decides you are not able to make this decision, the judge can say it's okay for your guardian to see your records if the judge thinks that is best for you.

Background

In the past, sometimes people would not go to counseling because they didn't want their guardians to see their records.

To fix the problem, the law was changed to give you the right to control your records. [735 ILCS 5/8-802.1](#).

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Right of Adults with Guardians to Control the Privacy of Their Rape Crisis Center Records

Current Law

An adult with a guardian can:

- decide whether his or her guardian can look at her/his rape crisis center records; and
- decide whether or not to waive the rape crisis center privilege.

If a court decides that the adult with a guardian is not capable of making an informed decision about waiving the privilege, the guardian can still do so, provided that the guardian's interests are not adverse to the interests of the adult.

Background

Prior to January 1, 2011, an adult with a guardian had no right to control whether the guardian had access to her/his rape crisis center counseling records. In addition, an adult with a guardian could not decide whether to waive the rape crisis center privilege. Only the guardian could make that decision.

Sometimes a victim with a disability had a guardian whose interests were adverse to those of the victim.

To remedy this problem, the Confidentiality of Statements Made to Rape Crisis Personnel statute was amended to provide adults with a guardian control and access to their records at the rape crisis centers. [735 ILCS 5/8-802.1\(c\)](#).

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You Can Get Short-Term Counseling

You do not have to tell your guardian that you want to see a counselor. You can see the counselor up to five times without telling your guardian.

If the counselor thinks he or she needs to tell your guardian about the counseling, the counselor must tell you that.

Background

In the past, your guardian had to say it was okay for you to get counseling.

Sometimes guardians did not give permission to get counseling and the person with the disability could not receive the counseling they wanted.

Now, you can call a counselor or ask someone you trust to help.

The law changed because of the work of self-advocates. [405 ILCS 5/2-101.1](#).

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Right of Adults with Guardians to Obtain Short-Term Counseling

Current Law

An adult with a guardian can attend up to five, forty-five minute counseling sessions without the consent of, or notice to, the guardian unless the counselor or therapist believes such disclosure is necessary.

If a counselor or therapist decides to disclose the fact of counseling or psychotherapy to the guardian, he or she must inform the adult with a guardian.

The guardian is not responsible for the costs of counseling or psychotherapy received by the adult without the consent of the guardian.

Background

Prior to January 1, 2012, an adult with a guardian of her/his person had no right to attend counseling sessions without the consent of the guardian.

Reasons for decisions to deny consent to adults with disabilities who had been sexually assaulted varied. Sometimes the guardian did not believe that the ward had been sexually assaulted; sometimes the guardian supported, or worst of all was, the assailant.

To remedy this problem, the Mental Health and Developmental Disabilities Code was amended to provide adults with a guardian of her/his person access to short-term counseling. [405 ILCS 5/2-101.1](#).

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