

Nebraska Medical Sexual Assault Protocol

NEBRASKA ATTORNEY GENERAL'S OFFICE

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Introduction

Neb. Rev. Stat. 84-218 requires the Attorney General to develop and distribute a statewide model anonymous reporting protocol for use by health care providers as provided in Neb. Rev. Stat. 28-902. According to the Center for Disease Control, sexual violence affects millions of people each year in the United States. No community is immune to these horrendous crimes. A process must, therefore, be created for compassionate and comprehensive care.

The intent of the *Nebraska Medical Sexual Assault Protocol* is to assist medical providers statewide with best practice standards around the medical forensic examinations. As outlined in the *National Protocol for Sexual Assault Medical Forensic Examinations*, effective collection of evidence is of crucial importance to successfully prosecute sex offenders. However, it is crucial that those who have experienced sexual violence also be treated by trauma-informed practitioners to promote their overall healing and care. For further education and training regarding sexual violence, please contact our State Forensic Nursing Coordinator at the Office of the Nebraska Attorney General.

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Definitions

Actor means a person accused of sexual assault. – *Neb. Rev. Stat. §28-318(1)*

Acute Examination is an examination completed on Adults or Adolescents within 120 hours from the assault or on children within 72 hours from the assault.

– *A National Protocol for Sexual Assault Medical Forensic Examinations*

Adolescents are distinguished in the protocol from prepubertal children who require a pediatric exam. This document focuses on the examination of females who have experienced the onset of menarche and males who have reached puberty. However, it is important to recognize that age also plays a role in whether a person is treated as a child or adolescent.

– *A National Protocol for Sexual Assault Medical Forensic Examinations*

Adult shall mean any married person or any unmarried person of the age of eighteen years or older. – *Neb. Rev. Stat. §28-807(1)*

Advocate means any employee or supervised volunteer of a domestic violence and sexual assault victim assistance program or of any other agency, business, or organization that is not affiliated with a law enforcement or prosecutor's office, whose primary purpose is assisting domestic violence and sexual assault victims. – *Neb. Rev. Stat. §28-902(6)(a); Neb. Rev. Stat. §29-4302*

Anonymous reporting protocol means a reporting protocol that allows the identity of the victim, his or her personal or identifying information, and the details of the sexual assault or attempted sexual assault to remain confidential and undisclosed by the health care provider, other than submission to law enforcement of any sexual assault evidence collection kit, unless and until the victim consents to the release of such information. – *Neb. Rev. Stat. §28-902(6)(b)*

Bodily injury shall mean physical pain, illness, or any impairment of physical condition.

– *Neb. Rev. Stat. §28-109(4)*

Child means an individual who has not attained eighteen years of age.

– *Neb. Rev. Stat. §43-1227(2)*

Deadly weapon shall mean any firearm, knife, bludgeon, or other device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or intended to be used is capable of producing death or serious bodily injury. – *Neb. Rev. Stat. §28-109(8)*

Force or threat of force means (a) the use of physical force which overcomes the victim’s resistance or (b) the threat of physical force, express or implied, against the victim or a third person that places the victim in fear of death or in fear of serious personal injury to the victim or a third person where the victim reasonably believes that the actor has the present or future ability to execute the threat. – *Neb. Rev. Stat. §28-318(9)*

Intimate parts means the genital area, groin, inner thighs, buttocks, or breasts.
– *Neb. Rev. Stat. §28-318(2)*

Law enforcement means a law enforcement agency in the county in which the consultation occurred. – *Neb. Rev. Stat. §28-902(6)(d)*

Non-acute examinations take place past the 120-hour window for Adult/Adolescent exams and past 72 hours for children. – *A National Protocol for Sexual Assault Medical Forensic Examinations*

Past sexual behavior means sexual behavior other than the sexual behavior upon which the sexual assault is alleged. – *Neb. Rev. Stat. §28-318(3)*

Serious bodily injury shall mean bodily injury which involves a substantial risk of death, or which involves substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body. – *Neb. Rev. Stat. §28-109(21)*

Serious personal injury means great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.
– *Neb. Rev. Stat. §28-318(4)*

Sexual Assault Medical Forensic Examination is an examination of a sexual assault patient by a health care provider, ideally one who has specialized education and clinical experience in the collection of forensic evidence and treatment of these patients. This includes gathering information from the patient for the medical forensic history; an examination; coordinating treatment of injuries, documentation of biological and physical findings, and collection of evidence from the patient; documentation of findings; information, treatment, and referrals for STIs, pregnancy, suicidal ideation, alcohol and substance abuse, and other non-acute medical concerns; and follow-up as needed to provide additional healing, treatment, or collection of evidence. The exam is referred to as the “forensic medical examination” under the Violence Against Women Act (VAWA).

– *A National Protocol for Sexual Assault Medical Forensic Examinations*

Sexual Assault Nurse Examiner or **Forensic Nurse Examiner** is the term referring to the health care provider conducting the sexual assault medical forensic examination.

– *A National Protocol for Sexual Assault Medical Forensic Examinations*

Health care provider means any of the following individuals who are licensed, certified, or registered to perform specified health services consistent with state law: A physician, physician assistant, nurse, or advanced practice registered nurse. – *Neb. Rev. Stat. §28-902(6)(c)*

Sexual contact means the intentional touching of the victim’s sexual or intimate parts or the intentional touching of the victim’s clothing covering the immediate area of the victim’s sexual or intimate parts. Sexual contact shall also mean the touching by the victim of the actor’s sexual or intimate parts or the clothing covering the immediate area of the actor’s sexual or intimate parts when such touching is intentionally caused by the actor. Sexual contact shall include only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party. Sexual contact shall also include the touching of a child with the actor’s sexual or intimate parts on any part of the child’s body for purposes of sexual assault of a child under sections 28-319.01 and 28-320.01. – *Neb. Rev. Stat. §28-318(5)*

Sexual penetration means sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor’s or victim’s body or any object manipulated by the actor into the genital or anal openings of the victim’s body which can be reasonably construed as being for nonmedical or nonhealth purposes. Sexual penetration shall not require emission of semen. – *Neb. Rev. Stat. §28-318(6)*

Victim means the person seeking medical care. – *Neb. Rev. Stat. § 28-902(6)(e)*

Without consent means

(a)(i) The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the consent, if any was actually given, was the result of the actor’s deception as to the identity of the actor or the nature or purpose of the act on the part of the actor -

(b) The victim need only resist, either verbally or physically, so as to make the victim’s refusal to consent genuine and real and so as to reasonably make known to the actor the victim’s refusal to consent; and

(c) A victim need not resist verbally or physically where it would be useless or futile to do so. – *Neb. Rev. Stat. §28-318(8)*

Nebraska Statutes Relating to Sexual Assault

The following list of statutes relate to sexual assault and can be found on the Nebraska Legislature's website, www.nebraskalegislature.gov.

[Neb. Rev. Stat. §28-318\(1\)](#)

[Neb. Rev. Stat. §28-807\(1\)](#)

[Neb. Rev. Stat. §28-902\(6\)\(a\)](#); [Neb. Rev. Stat. §29-4302](#)

[Neb. Rev. Stat. §28-902\(6\)\(b\)](#)

[Neb. Rev. Stat. §28-109](#)

[Neb. Rev. Stat. §43-1227](#)

[Neb. Rev. Stat. §28-109\(8\)](#)

[Neb. Rev. Stat. §28-318](#)

[Neb. Rev. Stat. §28-902\(6\)\(c\)](#)

[Neb. Rev. Stat. §28-902\(6\)\(d\)](#)

[Neb. Rev. Stat. §28-318\(3\)](#)

[Neb. Rev. Stat. §28-109\(21\)](#)

[Neb. Rev. Stat. § 28-902\(6\)\(e\)](#)

Statute of Limitations

There is no statute of limitations for first or second degree sexual assault of an adult. There is also no statute of limitations for first, second, or third degree sexual assault of a child. When the victim is under 16 years of age at the time of the offense, there is no statute of limitations for third degree sexual assault. Otherwise, there is an 18-month statute of limitations for third degree sexual assault when the victim is over 16 years of age at the time of the offense. Neb. Rev. Stat. §29-110 (Reissue 2016). For any sexual offense that occurred prior to 2005, please consult your local county attorney regarding the applicable statute of limitations.

Trauma Informed Care

Advocacy Response in the Medical Setting

Notification of advocates shall occur when the victim or survivor presents to the medical facility for care. Advocates may be involved in initial victim contact (via 24-hour hotline or face-to-face meetings).

Advocates may provide support, crisis intervention, information, and referrals before, during, and after the exam process. They often provide comprehensive, longer-term services designed to aid victims in addressing any needs related to the assault, including but not limited to counseling and legal (civil, criminal, and immigration) and medical systems advocacy.

Unless the presenting medical condition or victim's safety precludes it, the victim should be afforded the opportunity to speak privately with a victim advocate prior to investigative and sexual assault medical forensic interviews or procedures. The advocate will explain the advocate's role and the services of the victim advocacy program.

Whenever possible, advocates should be available in person. If it is not possible for an advocate to be available in person in a timely manner, they should be available via phone. Advocates should be able to provide support and advocacy during the history if desired by patients. The presence of an advocate should be determined by the patient.

Advocates may help patients feel more comfortable and supported. Advocates should be careful not to answer questions asked of patients or otherwise influence their statements.

See Appendix B to determine which DV/SA advocacy program serves your area.

Law Enforcement Response in the Medical Setting

Law Enforcement Reporting Options for Victims of Sexual Assault

Victims who are under the age of 18 and have reported or have suspected sexual assault has occurred must be reported to law enforcement who has jurisdiction over where the assault occurred.

Notification to the Child Protective Services Hotline must also take place by calling 1-800-652-1999.

Per Neb. Rev. Stat. 28-902. For victims who are 18 years and older, health care providers shall report if the victim is suffering from a serious bodily injury, or any bodily injury where a deadly weapon was used to inflict such injury. Health care providers must also report when an injury appears to have been received in connection with, or as a result of, the commission of an actual or attempted sexual assault to law enforcement.

Such report shall include the name of the victim, a brief description of the victim's physical injury, and, if ascertainable, the victim's residential address and the location of the offense. Any other law or rule of evidence relative to confidential communications such as HIPAA is suspended insofar as compliance with this statute is concerned.

If the victim is 18 years and older and has not experienced serious bodily injury, the patient/victim may choose one of the following options. When choosing one of the following options, the health care provider must assist in the reporting to law enforcement if the victim so chooses. The options are as follows:

1. Full Law Enforcement Report with Evidence Collection

If the patient wishes to report the crime to law enforcement, is opting to have evidence collected, and law enforcement has not yet been contacted, the provider must notify the law enforcement agency in the jurisdiction where the sexual assault occurred. When the responding officer arrives, the provider should record the officer's name and associated case number in the patient's record. Payment should be sent to the Sexual Assault Payment Program.

2. Partial Report with Evidence Collection

Some patients who present themselves for medical forensic treatment may, because of the trauma they have experienced or for other reasons, be undecided over whether to formally report the crime to law enforcement. Such patients will have the option of participating in a partial reporting option that will allow the patient to have forensic evidence collected, consent to submit such evidence for DNA testing, and report only their name to law enforcement. Law enforcement is encouraged to only make contact with an individual making a partial report in the event that a potential match with another case is identified. Although the patient is not fully participating in the investigation, they can choose to speak with law enforcement on a limited basis. Partial reporting victims may also choose to later convert their case to a full law enforcement report by reinitiating contact with the appropriate law enforcement agency.

3. Anonymous Reporting with Evidence Collection

Nebraska sexual assault victims also have the right to have forensic evidence collected without providing their name or any other personal information to law enforcement. The anonymous report ensures that these sexual assault victims have the opportunity to preserve evidence that would otherwise be destroyed. In cases where the victim opts for an anonymous report, the examiner should place the kit number instead of the patient name for tracking purposes. They then should notify the law enforcement agency in the jurisdiction where the consultation occurred of the anonymous report and turn over the evidence collected to them for storage and/or transport to the jurisdiction where the sexual assault occurred. The kit or accompanying paperwork SHALL NOT contain the patient name anywhere. Sexual Assault kits are held within the law enforcement facilities for 20 years. The victim may convert their case at any time to a full law enforcement or partial report. Victims who have experienced serious bodily injury or if a weapon was used during the assault are not eligible for anonymous reporting.

Nebraska Sexual Assault Kit

Nebraska has one standard sexual assault kit available through Sirchie Evidence Company.

Kits may be sent directly to health care entities or law enforcement agencies at no cost. Scans of the packing slips sent with the sexual assault kits must be submitted when kits are received by the receiving facility to the NCC.SAPP@nebraska.gov.

For information on how to obtain these kits, please contact the State Forensic Nursing Coordinator at **(402) 471-1818**.

Paperwork for kits, along with reimbursement forms, are available on the Attorney General's Website www.ago.nebraska.gov/providers.

Reimbursement for the medico-forensic examination may be received by a health care entity who has provided this service. These entities must submit a [Data Demographic Form](#), along with an invoice outlining the facility and examiner fees. In order to receive reimbursements, they must be submitted no later than July 15th following the conclusion of the fiscal year ending on June 30th.

Reimbursements are outlined in Neb. Rev. Stat. 81-1429.03.

Reimbursement claims must be submitted as well to NCC.SAPP@nebraska.gov.

MEDICAL PROVIDERS SHALL NOT SUBMIT TO A PATIENT OR THEIR INSURANCE FOR ANY COST RELATED TO THE MEDICO-FORENSIC EXAMINATIONS.

Evidence Collection Steps

Step 1: Foreign Material Sheet

1. Place barrier sheet from facility on floor.
2. Place Foreign Material Sheet on floor.
3. Describe on outside of bag any contents on sheet.

Step 2: Clothing, i.e., Shirt, Pants, Bra, etc., Non-Underwear (Minimum 3 Bags)

1. Patient has right to decline to give clothing.
2. Collect each piece of clothing while patient remains on sheet.
3. Collect each piece in individual bags, only one item per bag.
4. Label on outside of each bag what article of clothing is inside of bag.
5. Fold edges of bag in and seal with packing tape. Initial over edge seal.

Step 3: Underwear (2 Bags)

Check box for used or not used at top. Directions:

1. Collect even if patient has changed underwear.
2. Place one item per bag.
3. Label on outside of each bag what article of clothing is inside of bag.
4. Fold edges of bag in and seal with packing tape. Initial over edge seal.

Step 4: Oral Evidence Swabs

Directions:

1. Collect samples when oral penetration is reported, suspected or patient is unsure/ does not remember.
2. Inspect and document any injuries and photograph if possible.
3. Using both swabs, swab the gum line, between the margin of gums and cheek, crevices between teeth, and under the tongue.
4. Place in swab box and check oral on side of the box.
5. Seal with tape and initial over edges.

Step 5: Additional Evidence or Miscellaneous Swabs

Check box for used or not used at top. Directions:

1. Slightly moisten two swabs with sterile water. Swab area first and label as such.
2. Swab on neck for strangulation or possible strangulation.
3. Swab patient's body where there may be specimens for collection.
4. Follow with second set of dry swabs.
5. Note on the box where the swab was obtained from and indicate on body diagram in kit paperwork.
6. Return to envelope and seal with tape and initial over seal.
7. Additional details: One site sample per envelope.

Step 6: Alternative Light Source Swabs

Check box for used or not used at top. Directions:

1. Slightly moisten swab with sterile water and label 1st swab set.
2. Follow with second set of dry swabs and label 2nd set.
3. Swab by history as well and document what patient states occurred, if known, on envelope. I.e. licked, kissed, ejaculated, etc.
4. Note on the box where the swab was obtained from and indicate on body diagram in kit paperwork.
5. Return to envelope and seal with tape and initial over seal.
6. One site sample per envelope.

Step 7: Fingernail Swabs

Check box for used or not used at top. Directions:

1. Examine for injury. Document and photograph if fingernails are dirty or damaged.
2. Remove paper and place under each hand.
3. Slightly moisten swabs and swab (not scratch) under each fingernail on one hand.
4. Repeat with same procedure on second hand.
5. Document which hand on outside of each box.
6. Replace boxes and paper to inside of envelope and seal with tape and initial over seal.

Step 8: Mons Pubis Swab/Combings

Check box for used or not used at top. Directions:

1. Examine for injury. Document and photograph if possible.
2. Remove small paper bindle, place under patient buttock.
3. If pubic hair present, use comb in a downward motion and allow debris and hair to fall onto paper.
4. Place comb in middle of paper and fold edges inward to preserve samples collected.
5. If no pubic hair present, use swabs and extra swab box and label as pubic hair swabs.
6. Replace boxes and paper to inside of envelope and seal with tape and initial over seal.

Step 9: External Genital Swabs Male or Female

Check box for used or not used at top. Directions:

1. Examine for injury. Document and photograph if possible.
2. Slightly moisten swabs with sterile water.
3. Using both swabs:
 - a. Males: swab the glans penis, penis and scrotum.
 - b. Females: swab labia majora, labia minora, folds inside the labia.
4. Prepubertal exams should not touch or go past the hymen in females.
5. Label where the swabs have been obtained from. Replace boxes and paper to inside of envelope and seal with tape and initial over seal.

Step 10: Anal/Rectal Swabs

Check box for used or not used at top. Directions:

1. Examine for injury. Document any injuries and photograph when possible.
2. Collect swabs from just inside anal canal.
3. Label and place in anal swab box. Replace boxes and paper to inside of envelope and seal with tape and initial over seal.

Step 11: Vaginal/Cervical Swabs Directions (Do Not Use with Prepubetal Exam):

1. Examine external genitalia including the posterior fourchette, fossa navicularis, labia minora and majora. Document any injuries. Photograph if possible.
2. Using two swabs simultaneously, thoroughly swab the vaginal vault and avoid the cervical area. Ensure samples cover all sides of swabs.
3. Next, using two more swabs, swab the cervix and posterior fornix.
4. Package each set in separate boxes and label 'vaginal' on first set, and 'cervical' on the other.
5. Label where the swabs have been obtained from. Replace boxes and paper to inside of envelope and seal with tape and initial over seal.

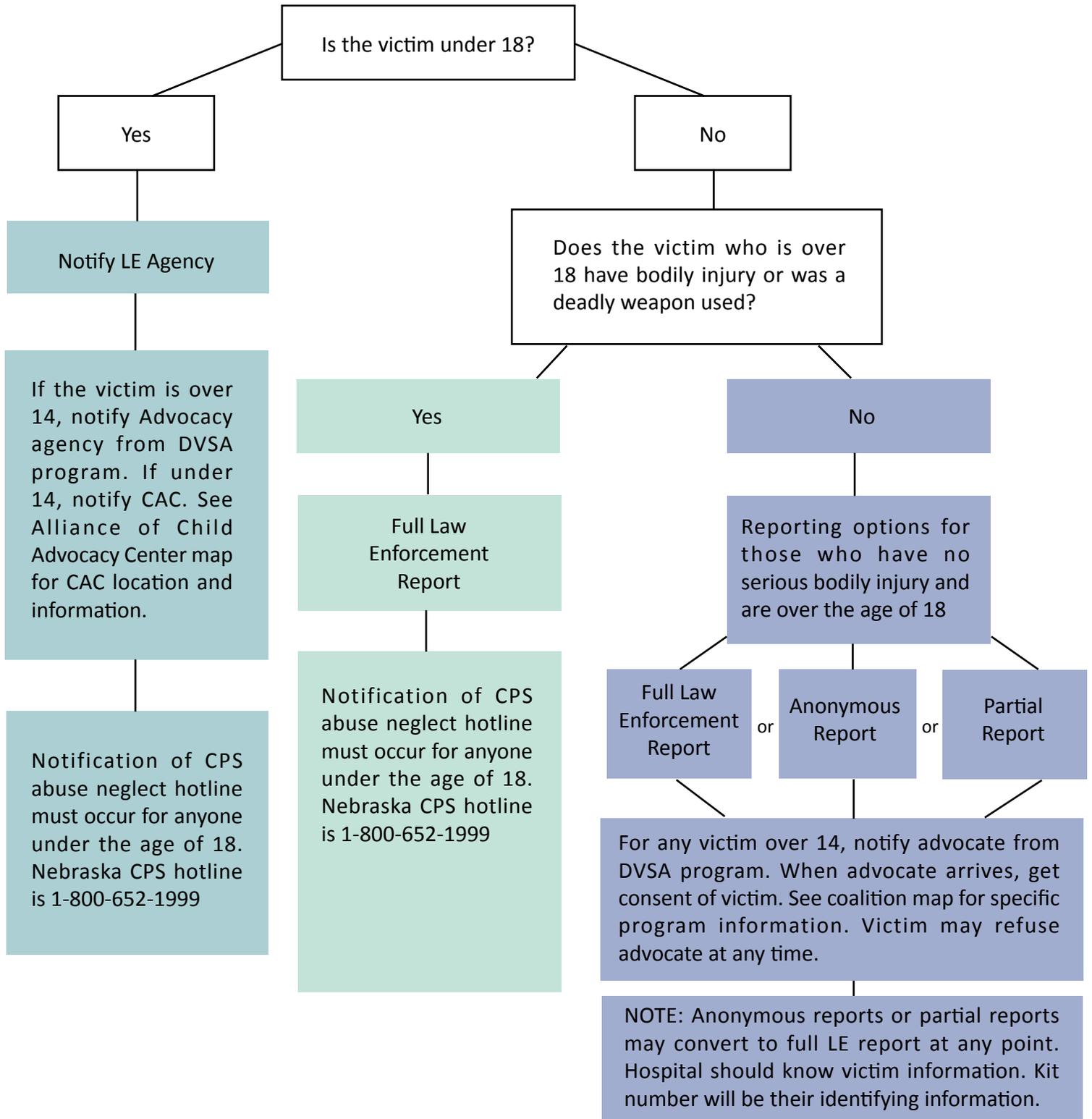
Step 12: Patient's Reference DNA Swab - Oral

Place back in kit either way. Directions:

Sample must be collected in all cases.

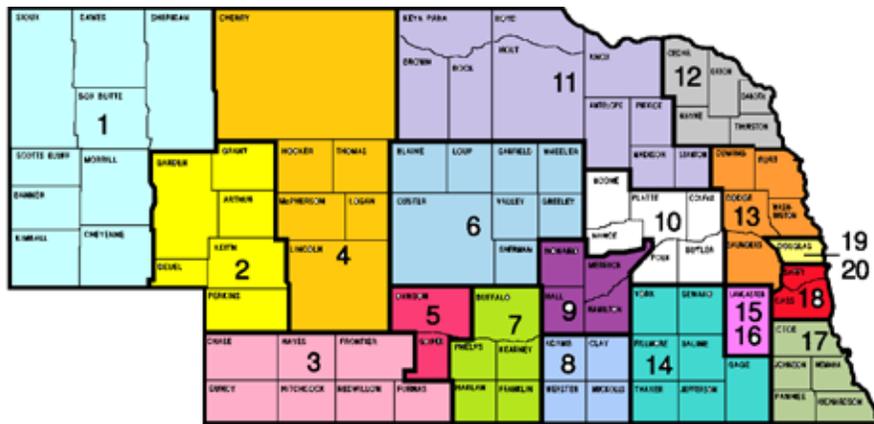
1. Have patient rinse with mouthwash and brush teeth thoroughly prior to collection.
2. Using both swabs, vigorously swab each inside of the cheeks.
3. Label where the swabs have been obtained from. Replace boxes and paper to inside of envelope and seal with tape and initial over seal.

Appendix A: Reporting Decision Tree



Appendix B: DV/SA Victim Service Agency Information

Nebraska's Network of Domestic and Sexual Violence Programs



| | | <u>Crisis Line</u> | | | <u>Crisis Line</u> |
|-----|--|--------------------|-----|---|--------------------|
| 1. | DOVES Program (Gering) | 866-95-DOVES | 11. | Bright Horizons (Norfolk) | 877-379-3798 |
| 2. | SCIP (Ogallala) | 308-284-6055 | 12. | Haven House (Wayne) | 800-440-4633 |
| 3. | DA/SA Services (McCook) | 877-345-5534 | 13. | The Bridge (Fremont) | 888-721-4340 |
| 4. | R/DAP (North Platte) | 888-534-3495 | 14. | Hope Crisis Center (Fairbury) | 877-388-4673 |
| 5. | Parent-Child Center (Lexington) | 800-215-3040 | 15. | Voices of Hope (Lincoln) | 402-475-7273 |
| | <i>en español</i> | 866-351-9594 | 16. | Friendship Home (Lincoln) | 402-437-9302 |
| 6. | Healing Hearts and Families (Broken Bow) | 800-942-4040 | 17. | Project Response (Auburn) | 800-456-5764 |
| 7. | SAFE Center (Kearney) | 877-237-2513 | 18. | Heartland Family Service - Domestic Abuse Program (Papillion) | 800-523-3666 |
| 8. | SASA Crisis Center (Hastings) | 877-322-7272 | 19. | Catholic Charities—The Shelter (Omaha) | 402-558-5700 |
| 9. | The Crisis Center (Grand Island) | 866-995-4422 | 20. | Women's Center for Advancement (Omaha) | 402-345-7273 |
| 10. | Center for Survivors (Columbus) | 800-658-4482 | | | |

Línea de Crisis en Nebraska: 1-877-215-0167 (Statewide Spanish Hotline)
 National Domestic Violence Hotline: 1-800-799-SAFE (7233)
 Rape, Abuse, Incest National Network (RAINN): 1-800-656-HOPE (4673)
 National Teen Dating Abuse Helpline: 1-866-331-9474
 StrongHearts Native Helpline: 1-844-7NATIVE (762-8483)

For more information,
 Contact the Nebraska Coalition to End Sexual and Domestic Violence at 402-476-6256 or visit nebraskacoalition.org.

Appendix C: Advocate Responsibilities

Advocate Responsibilities

1. Respond in person to medical facility at which the sexual assault victim presents for care in as timely a manner as possible.
2. Be available to speak with a victim via phone if necessary prior to arriving in person at medical facility.
3. Check in with medical facility point of contact upon arrival.
4. Be present for as much or as little of the process as the victim wants.
5. Explain to the victim the advocate's role and the services available from the advocacy program. Discuss client confidentiality and limitations to confidentiality.
6. Provide emotional support to the victim and provide information as appropriate, including, but not limited to, the following: general information about sexual assault and victims' rights; information about medical forensic exam procedures; information about the criminal justice process; and information about sexual assault protection orders.
7. Help victim to identify needs and explore options and provide referrals as necessary.
8. As needed, advocate for the victim with law enforcement, medical personnel, shelter, criminal justice system, and other service providers in the community.
9. Help arrange transportation if needed.
10. Discuss follow-up with the victim and, with permission from the victim, provide follow-up within 48 hours of initial contact. Dependent on advocacy agency protocol and victim preferences, follow-up may be in the form of email, text, phone call, or letter.
11. Communicate with others and provide follow-up regarding the victim's case ONLY with a release of information from the victim.
12. Document response: time of call, when advocate received information, arrived at the hospital and end of call.

Out-of-scope Activities for Advocate

1. Assisting with the collection of evidence or interviewing the victim as part of the investigation.
2. Advising or persuading victim to choose one option over another.
3. Making decisions or speaking on behalf of the victim.
4. Giving legal advice.
5. Providing medical care or advice.

Appendix D: Law Enforcement Response and Communication

Law Enforcement Response to Sexual Assault

Nebraska’s criminal justice professionals recognize sexual assault as a crime that intimately violates a person’s body. This can have lasting effects on the person who was assaulted. These professionals also recognize that the process for a victim to participate in the investigation of a sexual assault, and hold the perpetrator of that assault accountable for their actions, can be difficult and cause additional trauma, and sometimes further risk the safety of the victim. To improve victim and community safety across Nebraska, the criminal justice system should attempt to eliminate as many barriers to reporting to law enforcement as possible.

As guardians of public trust, law enforcement has a duty to protect community safety by seeking criminal accountability of those who violate the law. This is most effectively done when victims of crime participate in the criminal justice process. In order to keep victims of crime engaged in the process, law enforcement should recognize and account for the potential harms that a victim can experience for choosing to report and participate in the criminal justice process. Law enforcement best practices for effective law enforcement response to sexual assault are detailed by the Police Executive Research Forum (PERF) in their *Executive Guidebook: Practical Approaches for Strengthening Law Enforcement’s Response to Sexual Assault*.¹

This guidebook, developed by police professionals, details comprehensive implementation of investigative procedures, policy considerations, training, coding and classification of reports, and community partnerships. Key elements of this guidebook include:

- Adopting a Victim-Center Approach
- Implementing a Trauma-Informed Response

Both of these pillars of law enforcement response are reflected in the You Have Options Program.² Nebraska law enforcement agencies are encouraged to consider implementing the You Have Options Program within their agency.

Law Enforcement Response to Sexual Assault Evidence Collection by Health Care Providers

Law enforcement agencies receive reports from medical providers whenever a “health care provider is consulted for medical care for physical injury which appears to have been received in connection with, or as a result of, the commission of a criminal offense.”³ This report must include the patient’s name.

1. <https://www.policeforum.org/assetsSexualAssaultResponseExecutiveGuidebook.pdf>

2. <https://www.reportingoptions.org/>

3. Neb. Rev. Stat. 28-902, 2018

This statutory requirement, commonly referred to as “mandatory medical reporting,” is known to be a barrier for sexual assault victims seeking medical care in the wake of an assault. Victims of sexual assault can sometimes feel conflicted about seeking medical care if criminal justice contact will be required. Therefore, in 2018, an exception was created for certain situations involving sexual assault.

The exception provides no report will be made when “a health care provider is consulted for medical care for physical injury which reasonably appears to have been received in connection with, or as a result of, the commission of an actual or attempted sexual assault” and the sexual assault victim:

- was 18 years of age or older at the time of such actual or attempted sexual assault
- is not suffering from a serious bodily injury
- was not injured by use of a deadly weapon

Law enforcement should always provide a report number for reference to the health care provider.

Anonymous Law Enforcement Report with Evidence Collection

A victim may choose to report a sexual assault anonymously for any number of reasons. A victim-centered approach, as recommended by PERF, requires law enforcement to respect the privacy of the victim, even if they come to know the identity of the victim or suspect by some means other than the report by the medical provider.

As discussed in this Protocol, if a victim chooses to report a sexual assault anonymously, the law enforcement agency that is local to the medical facility (regardless of where the assault occurred) will be contacted. This may be the local police department, sheriff’s office, or the Nebraska State Patrol. Whichever agency is requested to respond, law enforcement will pick up the Anonymous Sexual Assault Kit (A-SAK), following chain of custody procedures, and store the sealed A-SAK among their evidence for 20 years from the date of collection – unless otherwise ordered by a court. An A-SAK must never change custodial agencies (e.g., from PD to SO or from SO to NSP). If the A-SAK were to change custodial agencies, it will negatively impact the ability of the victim to later “convert” the report from anonymous to a full investigation. See also Anonymous Report “Conversions” below.

The SAK number of every SAK stored by the agency must be entered into the agency’s record management system in a searchable field.

The victim will not be identified on the A-SAK, and the law enforcement copies of the health care provider’s report will be sealed inside the A-SAK.

Anonymous Report “Conversions”

The victim of an anonymously reported sexual assault may choose to contact the law enforcement agency storing the A-SAK at any time during the 20 year storage period in order to “convert” the report type and participate in the criminal justice process.

The victim of an anonymously reported sexual assault will be responsible for providing the number of their A-SAK to the storing law enforcement agency in order to associate the A-SAK with the victim. If the victim does not have their SAK number, they should be referred to the medical facility that collected the evidence. The health care provider will keep record of the SAK number and the confidential patient records. The health care provider will also record which of the local law enforcement agencies picked up the A-SAK, so they can direct the victim to the appropriate agency and associate the evidence with the investigative report. If the investigating agency with jurisdiction over the assault is not the same as the agency storing the SAK, the agencies will arrange for transfer of custody upon report conversion following standard protocols.

Partial Law Enforcement Report with Evidence Collection

As discussed in this Protocol, a partial law enforcement report allows a “middle road” for a victim of sexual assault. This would be used if the victim wants to gather more information before deciding if participating in the criminal justice system is the best choice for them. The law enforcement agency in whose jurisdiction the assault occurred will be contacted by the health care provider to pick up the SAK for evidence processing. The responding officer will not make initial contact with the victim at the medical facility.

The investigating agency will be provided the victim’s name and contact information by the health care provider, and will have access to the complete report provided to the health care provider (including description of the assault). If the description of the assault meets the necessary elements of the crime in order to request the evidence be processed by the crime lab, the investigating officer is encouraged to submit the SAK to the lab for testing and entry into CODIS.

The investigating officer will reach out to the victim when s/he has information to share about the physical evidence in the case, such as hits in CODIS for similar assaults. Contact should be scheduled for an in-person meeting, in a private space, and in collaboration with victim services.

The officer is encouraged to refrain from making contact with the suspect or any witnesses without the victim’s consent, as such contact may jeopardize the safety of the victim.

Full Law Enforcement Report of Sexual Assault

If a victim chooses to fully participate in the criminal justice process at the time of the forensic medical evidence collection, the responding officer should take an initial statement from the victim as soon as contact can be made.

Refer to the PERF Executive Guidebook for First Responding Officer Responsibilities.

Call-Taker Response to Sexual Assault Reports from Health Care Providers

When responding to a medical facility due to a reported sexual assault, the law enforcement call-taker (dispatcher, 911 operator, etc.) should determine:

- Is there an ongoing, immediate threat to community safety related to the report?
- Does the victim have life-threatening injuries? Did the assault involve a deadly weapon?
- Does the victim report that penetration occurred?
- Is the victim under 18 years old? Is the victim under 16 years old?

These questions will assist in determining the nature and urgency of the responding officer's response.

Threats to Community Safety

If there is an ongoing, immediate threat to community safety (such as threats to kill or further harm), law enforcement must respond to the threat first. The investigation of the sexual assault will follow.

Life-Threatening Injuries or Deadly Weapon Involved

Incidents of sexual assault that result in "serious bodily injury," or involve injuries that were inflicted with a deadly weapon, are required to be reported to law enforcement as a full report.

This information is key to determining severity of the crime. Investigators with training on sexual assault investigative best practices should investigate such reports.

Penetration

This information is key to determining severity of the crime. Investigators with training on sexual assault investigative best practices should investigate such reports.

Victim Age

An incident of sexual assault in which the victim is under the age of 18 requires a full law enforcement report and a juvenile victim must have the consent of a parent/guardian for forensic medical evidence collection. If the parent or guardian is the accused offender, consent may be given by Child Protective Services. Any law enforcement investigation will be conducted in coordination with the local child advocacy center.

This information is key to determining severity of the crime. Investigators with training on sexual assault investigative best practices should investigate such reports.

Call-Taker Response to Sexual Assault Kit Pick-up Requests

If a sexual assault kit (SAK) is not picked-up at the time of initial contact for a full law enforcement report, then the medical facility will call law enforcement to pick-up the SAK. The law enforcement call-taker (dispatcher, etc.) should determine:

- Is there a prior contact for this SAK?
- Does the SAK require refrigeration?

Prior Contact

If a victim chooses to make contact with law enforcement at the time of evidence collection, the SAK evidence will need to be associated with the investigating officer's report in the agency's records management system.

If the victim chooses to not make contact with law enforcement at the time of evidence collection (through either the Anonymous or Partial Reporting options, detailed below), then the agency will pick-up the SAK for storage, creating a new file for record keeping purposes.

Refrigeration

In order to maintain the integrity of the evidence, it is beneficial for law enforcement to know in advance if the SAK requires refrigeration for storage. Refrigeration is only required for SAK storage when the SAK contains liquids, such as blood or urine. ANY agency officer can be tasked with SAK pick-up requests.

SAK Storage

It is a function of law enforcement, not medical providers, to store evidence, or potential evidence, of criminal activity. Medical providers will maintain chain of custody until the evidence is picked up by the law enforcement agency, but will not store evidence long-term.

The SAK number of every SAK stored by the agency must be entered into the agency's record management system in a searchable field.

Statute requires A-SAKs to be stored for 20 years. SAKs collected in 2005 or later should be stored for 20 years or longer pursuant to your agency's specific policies.

Anonymous Reports of Sexual Assault without Forensic Evidence Collection

Delayed reporting – days, weeks, or even years – is common and expected in sexual assault cases. If a victim can't or won't participate in forensic evidence collection, they may still choose to disclose their experience to law enforcement, as an authority in perpetrator accountability. If a victim is only willing to do this anonymously, service providers are encouraged to refer victims to the [Nebraska Crime Stoppers online reporting system](#). Submitting a Nebraska Crime Stoppers “tip” creates a time-stamped record of information that is shared with law enforcement. Information is monitored by the Nebraska State Patrol and may be distributed to the local law enforcement agency in cases in which the jurisdiction of the incident can be determined. The Nebraska Crime Stoppers system allows a victim to anonymously share information with law enforcement and engage in two-way communication with the assigned officer. Victims may also choose to “convert” this report and identify themselves to law enforcement at any time.

Anonymous reporting through Crime Stoppers allows victims of crime to share information with law enforcement that may assist in making connections between cases with similar fact patterns, while keeping their identity private until they are ready to come forward.

Sexual Assault Investigative Best Practices

As investigative techniques do evolve over time, all law enforcement agencies are encouraged to stay current with national best practices and participate in training opportunities to enhance Nebraska's ability to hold perpetrators of violent crimes accountable.

Appendix E: Child Advocacy Center Information



Nebraska Alliance of CACs Coverage Across the State



Bridge of Hope - North Platte

(308) 534-4064

**Satellite: Ogallala

Counties Served: Arthur, Chase, Dundy, Frontier, Grant, Hayes, Hitchcock, Hooker, Keith, Lincoln, Logan, McPherson, Perkins, Red Willow, Thomas

CAPstone - Gering

(308) 632-7274

**Satellites: Alliance, Chadron, and Sidney

Counties Served: Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, Sioux

Central NE Child Advocacy Center - Grand Island

(308) 385-5238

Counties Served: Clay, Garfield, Greeley, Hall, Hamilton, Howard, Merrick, Nuckolls, Webster, Wheeler

Child Advocacy Center - Lincoln

(402) 476-3200

**Satellites: Auburn and York

Counties Served: Butler, Cass, Fillmore, Gage, Jefferson, Johnson, Lancaster, Nemaha, Otoe, Pawnee, Polk, Richardson, Saline, Saunders, Seward, Thayer, York

Family Advocacy Network - Kearney

(308) 865-7492

**Satellites: Broken Bow and Hastings

Counties Served: Adams, Blaine, Buffalo, Custer, Dawson, Franklin, Furnas, Gosper, Harlan, Kearney, Loup, Phelps, Valley

Northeast Nebraska CAC - Norfolk

(402) 644-7402

**Satellites: O'Neill and Fremont

Counties Served: Antelope, Boone, Boyd, Brown, Burt, Cedar, Cherry, Colfax, Cuming, Dakota, Dixon, Dodge, Holt, Keya Paha, Knox, Madison, Nance, Pierce, Platte, Rock, Stanton, Thurston, Washington, Wayne

Project Harmony - Omaha

**Satellite: Fremont

402-595-1326

Counties Served: Douglas, Sarpy (also serves 16 counties in Iowa)



Nebraska Alliance of Child Advocacy Centers

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Michelle Muhle, Outreach Coordinator
Sarah Forrest, Special Projects Coordinator
Mandy True, Administrative Coordinator
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mmuhle@nebraskacacs.com
sforrest@nebraskacacs.com
mtrue@nebraskacacs.com
www.nebraskacacs.com

All seven CACs in Nebraska are members of the Nebraska Alliance, are accredited by the National Children's Alliance, and are either non-profit corporations or hospital-based agencies.

Bridge of Hope CAC

Amber McNutt
Interim Executive Director
410 West 5th Street
North Platte, NE 69101
(308) 534-4064
(308) 534-4422 (Fax)
director@bridgeofhopecac.org
www.bridgeofhopecac.org

CAPstone

Monica Shambaugh, Director
900 P Street
Gering, NE 69341
(308) 632-7274
(308) 632-5152 (Fax)
director@capstonenebraska.com
www.capstonenebraska.com

Central Nebraska CAC

Shannon Krejci, Director
2335 N Webb Road
Grand Island, NE 68803
(308) 385-5238
(308) 385-5239 (Fax)
director@cn-cac.org
www.cn-cac.org

Child Advocacy Center

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5025 Garland Street
Lincoln, NE 68504
(402) 476-3200
(402) 476-5330 (Fax)
lynn@smallvoices.org
www.smallvoices.org

Family Advocacy Network

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P.O. Box 2498
Kearney, NE 68848
106 East 31st Street
Kearney, NE 68847
(308) 865-7492
(308) 865-2971 (Fax)
jdirwin@familyadvocacynetwork.org
www.familyadvocacynetwork.com

Northeast Nebraska CAC

Kelli Wacker, Director
1500 Koenigstein Avenue
Norfolk, NE 68701
(402) 644-7402
(402) 644-7406 (Fax)
klowe@frhs.org
www.frhs.org/cac.html

Project Harmony

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11949 Q Street
Omaha, NE 68137
(402) 595-1326
(402) 595-1329 (Fax)
gklein@projectharmony.com
www.projectharmony.com

Appendix F: Resources

Nebraska Coalition to End Sexual and Domestic Violence

www.nebraskacoalition.org/welcome.html

Nebraska Alliance of Child Advocacy Centers

www.nebraskacacs.com

Nebraska Crime Commission

Crime Victim Reparations

ncc.nebraska.gov/crime-victim-reparations

Nebraska Crime Commission

Directory Search

www.nebraska.gov/crime_commission/directory/index.cgi

Nebraska Attorney General's Office

Providers Page

www.ago.nebraska.gov/providers

A National Protocol for Sexual Assault Medical Forensic Examinations: Adults/Adolescents

U.S. Department of Justice

www.ncjrs.gov/pdffiles1/ovw/241903.pdf

A National Protocol for Sexual Abuse Medical Forensic Examinations: Pediatric

U.S. Department of Justice

www.justice.gov/ovw/file/846856/download

International Association of Forensic Nurses

www.forensicnurses.org

