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Secure Digital  
Forensic Imaging

Secure Beyond Reasonable Doubt®

Health System Assessment For Determining What Technology Is Needed In Order For Medical Personnel to Take Pictures During A Forensic Medical Exams Based On Federal Definition Of The Term.

<https://www.ecfr.gov/current/title-28/chapter-I/part-90/subpart-A/section-90.2>

<https://www.govinfo.gov/content/pkg/CFR-2023-title28-vol2/pdf/CFR-2023-title28-vol2-sec90-2.pdf>

1. Does your facility currently provide forensic medical exams? Yes / No
2. Within your facility who conducts the forensic medical exams?
3. Within the past 12 months, how many forensic medical exams were performed within your facility?
4. Within the past 12 months, how many of those forensic medical exams were on adults vs. adolescents vs. pediatrics?
5. How does your facility get reimbursed for the forensic portion of a forensic medical exam for a Sexual Assault Kit (SA Kit)?
6. How does your facility get reimbursed for the medical portion of the forensic medical exam that is outside of the Sexual Assault Kit (SA Kit)?
7. Does your facility have a current forensic medical exam reimbursement policy that protects your State from losing federal funds dedicated to victims of crimes, and to prevent those lost funds from being redistributed to other States? (Reference to [USC - Title 34 §10449](#): Rape exam payments)
8. Does your State reimbursement law, for the forensic portion of the forensic-medical exam, pay more money to your facility when you take pictures for the SA Kit compared to not taking pictures for the SA Kit during that exam?
9. Currently, does your facility take pictures as part of the documentation process of the SA Kit? Yes / No
10. If your facility takes pictures during a forensic medical exam for the purpose of it being part of the SA Kit that may go to court, how are those pictures stored until the future court date?
11. What is your state's statutes of limitations for sex crimes for adults vs. adolescents vs. pediatrics when that case could go to court?
12. Do you know when/how in the process, a case goes federal?
13. Is your facility notified when a case goes federal? Yes No
14. What happens to your State statutes of limitations if a case goes federal for adults vs. adolescents vs. pediatrics? Does that extend the time that the case could go to court?
15. In years, what is your facility's retention-destruction life cycle of medical records?
  - a. How does this compare to your state and federal statutes of limitations of sex crimes?
16. How does your facility currently prevent pictures taken during a forensic medical exam from getting destroyed along with medical records when your facility executes their retention-destruction life cycle of their medical records?
  - a. Does your facility currently have a policy to protect themselves if pictures taken for the SA Kit is inadvertently destroyed, or if they destroy evidence that was paid for by the state?
17. According to U.S. Department of Health and Human Services Office for Civil Rights Breach Portal, there were 39 million medical records breached last year and that number is increasing every year.



- a. How does your facility currently protect pictures taken during a forensic medical exam from being accessed by a hacker during a breach?
  - b. How does your facility currently prove, beyond reasonable doubt, that the pictures have not been breached before its court case?
  - c. How does your facility currently prove that the pictures have been maintained within a chain of custody so they are admissible in court?
18. According to U.S. Department of Health and Human Services Office for Civil Rights Breach Portal, some types of breaches are theft, improper disposal, loss, unauthorized Access/Disclosure and Hacking/IT Incident.
- a. How does your facility currently prevent access to pictures if any of these types of breaches have occurred within your medical records?
  - b. How does your facility currently prevent your internal I.T.'s access to pictures taken during a forensic medical exam?
19. Where and how are your pictures backed-up and stored? How are they secured?
20. Has your facility ever been asked for pictures from a past forensic medical exam to be used in court?
21. Does your facility have a current policy on the workflow of sharing forensic pictures that were taken during a forensic medical exam to a third-party location outside of your facility's network?
- a. Currently, how does your facility find past cases, copy and move pictures taken during a forensic medical exam to a third party?
  - b. Currently, who within your facility finds the past cases, copies and moves pictures taken during a forensic medical exam to a third party?
  - c. What are the current costs associated with this workflow process of copying and moving forensic pictures?
    - i. What are the current costs related to time paid to the person to find the case, download pictures to a medium or to print the pictures?
    - ii. What is the current cost of the medium being used to transmit the data (DVD/Jump Drive/Printing/Other)?
    - iii. What are the current transportation costs associated with transferring the data? (Hiring drivers, mileage/gas to drive between locations, Shipping Costs/Other)?
  - d. What is your facility's current process to ensure Legal Chain of Custody, with the workflow described above, in order for the forensic pictures to be admissible in a court of law?
22. Does your facility currently store DVD's that store pictures from forensic medical exams? Yes/ No – If you answer yes, please complete the following questions.
- a. Does your facility currently have a regular quality control process ensuring integrity of the DVD's stored until the court date?
  - b. Who within your facility has access to the DVD's?
  - c. Does your facility have a policy in place that will protect themselves if DVDs degrade or disintegrate before the date the case goes to court?
  - d. Does your facility have a policy in place that will upgrade data to new mediums as DVD-R technology phases out in the future? (DVD-R was released in 2002.)



- e. Does your facility have a budget to internally upgrade to new mediums in the future?
23. Does your facility currently store pictures from forensic medical exams in the cloud? Yes/No/I Don't Know- If you answer yes, please complete the following questions.
- a. Does your facility have a copy of the privacy or service agreement of the cloud service of where the forensic pictures are stored?
  - b. Does your cloud's privacy policy indicate policy about collecting data, including personal data, usage data, patient data and photographs?
  - c. How does your cloud's privacy policy align with maintaining Legal Chain of Custody for a US court proceeding for sex crimes?
  - d. What I.T. personnel and owners, that manage the cloud service that store your forensic pictures, have access to?
  - e. Does your facility have proof that IT personnel or owners at the cloud service do not have access to your pictures?
  - f. How does the cloud storage group who stores your pictures, backup your pictures?
    - 1. How many of their servers have your pictures?
    - 2. Where are all of their servers located? Are they in the U.S?
  - g. If a defense lawyer, during a court case for a sex crime would ask your facility who had access to the pictures taken during a forensic medical exam, how would your facility currently answer in order to avert them as inadmissible in court.
  - h. Are there ongoing service costs or fees associated with cloud storage?
    - i. What are the current costs?
    - ii. What would happen to the forensic pictures if your facility would stop payments?
24. What capturing device does your facility personnel use to capture pictures during the forensic portion of the forensic medical exam?
- a. Currently, within your facility, who captures pictures for the forensic portion of the forensic medical exam?
  - b. Does your facility currently have a photodocumentation protocol in place where any and all medical personnel can take pictures the same way in order to receive consistent court ready pictures every time?
  - c. Is the facility's capturing device, currently used, easy to operate where any and all medical personnel can take pictures easily, thus keeping patient centric and receiving consistent diagnostic quality picture results for court throughout your organization?
  - d. Is the capturing device compact, portable and mobile where it can be hand carried between exam rooms and/or locations?
  - e. Currently who within your facility reviews these pictures to document findings for the SA Kit?
  - f. Currently, is there a process within your facility that all personnel currently views these pictures for post exam documentation of their findings the same way each time?
  - g. Currently when facility personnel reviews the pictures does your facility has processes that require them to view the pictures on a computer at 100%?



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- h. Currently, do facility personnel review the pictures on a computer at 100% (*1 screen pixel to 1 image pixel also shown as "original size"*) to ensure pictures maintain the seven elements rule that makes it a good picture and diagnostic quality where it would stand up in court? Reference <https://www.ncbi.nlm.nih.gov/pubmed/22123038>
    - i. Does the image represent the subject matter?
    - ii. Is the image clear and in focus?
    - iii. Is the image properly exposed, not too light or too dark?
    - iv. Is the image straight and aligned, not twisted and/or skewed?
  - i. What protection against liability does your facility have in place if something is missed within a picture because the medical personnel did not review it at 100% on a computer?
25. Currently does your facility's capturing device produce both a JPG and a RAW file? Yes/ No/ I Don't Know
- a. Currently, how would your facility respond if a defense attorney or expert witness mathematically proves that your JPG is not original within a court proceeding for a sex crime?
  - b. Does your facility currently save the digital negative or RAW files for every case picture in order to avert the argument to have your forensic pictures inadmissible in a court proceeding? Reference : [http://www.uscourts.gov/sites/default/files/evidence-rules-procedure-dec2017\\_0.pdf](http://www.uscourts.gov/sites/default/files/evidence-rules-procedure-dec2017_0.pdf)
    - i. If yes, how does your facility store the RAW files?