



NYCLU

NEW YORK CIVIL LIBERTIES UNION

125 Broad Street
New York, NY 10004
212.607.3300
212.607.3318
www.nyclu.org

MEMORANDUM

TO: Interested Parties

FROM: Corinne Carey

DATE: October 19, 2011

RE: Minor Consent to Forensic Evidence Collection in the course of Post-Sexual Assault Care

The New York Civil Liberties Union (NYCLU) is pleased to report that the New York State Department of Health (SDOH) confirmed on October 17, 2011 that there would be no change in the Department's long-standing policy that allows minors to consent on their own and without parental involvement to forensic evidence testing ("the rape kit") in the course of post-sexual assault care. Providers of sexual assault care can continue to offer minors medical care and the rape kit during a medical examination after a sexual assault with confidence that both New York law and SDOH policy support their actions.

The New York State Department of Health Child and Adolescent Sexual Assault Medical Protocol states:

As a general principle, collection of sexual offense evidence should not and cannot be undertaken in the absence of parental consent or the voluntary and knowing consent of an older minor, unless a court order is obtained by the appropriate authorities. In practice, child protective services guidelines provide that the refusal to consent to the collection of sexual offense evidence by an older minor is to be honored assuming that the minor appears capable of understanding the nature and consequences of evidence collection.¹

Providers across the state have long relied on this statement in the Protocol to support the collection of sexual offense evidence upon the consent of a mature minor who has been victimized by sexual assault. The existing Protocol's guidance on this subject is consistent

¹ N.Y. Department of Health, Department of Social Services, Child and Adolescent Sexual Offense Medical Protocol 33 (1998).

with New York law, best health care and law enforcement practices, and sound public policy that encourage minors to come forward and seek help after a sexual assault.

Background

This issue came to our attention in November 2009 after a surprising report from a Sexual Assault Nurse Examiner (SANE) in charge of a training program for upstate providers that SDOH had changed its position on the issue of minor consent. SDOH's new policy would have required parental consent before a rape kit could be performed on a minor. The NYCLU prepared a legal memo to SDOH urging that minors continue to be allowed to consent on their own. A group of 30 legal scholars from across the state submitted a letter to SDOH in support of NYCLU's position, asking the Department to refrain from changing the policy. Twenty-six providers of sexual assault care from hospitals and rape crisis programs in all regions of the state also wrote to SDOH expressing their concerns.

Through 2011, providers continued to contact NYCLU to express concerns about whether their provision of comprehensive post-sexual assault care to minors was lawful. We reached out to advocates, state officials, and staff in Governor Cuomo's office to seek clarification on the Department's policy.

We learned on October 17, 2011 that the Department would not change its long-standing policy, and would, in fact, retain the language about forensic evidence collection that appeared in the SDOH Protocol in a forthcoming revised Protocol. We are grateful to the Governor's staff for responding to our concerns; and we applaud the Department for responding to the concerns of the legal, advocacy, and provider communities and making a decision that we believe is supported by New York State law and sound public health policy.

Should you have any questions about this matter, or if you would like a copy of the legal memorandum that we issued in support of this outcome, please do not hesitate to contact me at (212) 607-3327.