School of Government

HEALTH LAW BULLETIN NO. 94 | AUGUST 2026

Forensic Medical Exams and Health Care for Sexual Assault Victims Who Are Minors: Who Is Authorized to Consent?

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CONTENTS

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The author would like to thank her School of Government colleagues for providing feedback on this bulletin. The author also extends her gratitude to the many external professionals, including attorneys, sexual assault nurse examiners, physicians, forensic analysts, and others, who shared their time and expertise by discussing or reviewing parts of this bulletin.

Introduction

Following a sexual assault, victims[1] may have any number of things on their minds: their immediate safety, whether to contact law enforcement, whether to seek medical care, and more. They may also have concerns about confidentiality and whether disclosing information about the assault while accessing services will trigger other legal consequences, such as reports to social services or criminal charges for the perpetrator. For victims and the professionals who support them after an assault, a complex web of laws can make it challenging to understand victims' options and when victims can exercise control over what happens next. The legal issues are especially complicated when the victim is a minor.[2] In some instances, the context in which a professional works will also change how the law applies to the provision of services to a minor victim, mandatory reporting, and confidentiality.

This bulletin is organized into two parts that address related but distinct legal questions that arise in North Carolina about consent and the services that may be available to a minor victim after a sexual assault. Part One discusses whether a minor can consent independently to a forensic medical exam conducted to gather potential evidence related to the sexual assault. Part Two considers whether a minor can consent independently to certain health services that may be offered separately or at the same time as the forensic medical exam, such as prevention, testing, or treatment for sexually transmitted infections.

Part One: Can a Minor Consent Independently to a Forensic Medical Exam to Gather Potential Evidence Related to the Sexual Assault?

Currently no North Carolina law directly addresses who may consent to a forensic medical exam when the victim is a minor.[3] There are multiple laws, however, regarding the general authority of parents over their minor children and parents' legal authority to consent to specific types of

1. Some professionals who serve people who have experienced sexual assault prefer to use the word "survivor" or other terminology instead of "victim." This bulletin uses the term "victim" to reflect and align with the language used in North Carolina's statutes and administrative rules. *Cf.* State v. Walston, 367 N.C. 721, 732 (2014) (noting recurring use of "victim" in pattern jury instructions but recommending use of "alleged victim" when the State offers no physical evidence and no corroborating testimony).

2. This bulletin uses the term "minor" to mean an unemancipated minor. An *unemancipated minor* is a person less than 18 years old who has not been emancipated via marriage or court order. *See* Chapter 90, Section 21.6(1a) of the North Carolina General Statutes (hereinafter G.S.) (defining *minor* for the purpose of accessing abortion services) and G.S. 90-21.10A(5) (defining *minor* for the purpose of the provision of treatment services, generally). An emancipated minor has the same legal authority to make decisions and transact business as if they were an adult, and their parent is relieved of all the legal duties and obligations and divested of all rights to the minor. G.S. 7B-3507. An emancipated minor may therefore consent to their own forensic medical exam.

3. By contrast, other states have enacted laws that clearly identify who may consent in these situations. In several states, the authority to consent to a sexual assault forensic medical exam is given to the minor, regardless of age. Some states also accept the consent of a parent for such exams or, if the minor gives consent, may require that the parents be promptly notified that the exam was performed. *See*, *e.g.*, Okla. Stat. tit. 63, § 2602 (2025) ("Any minor who is the victim of sexual assault [may give consent]; provided, however, that such self-consent only applies to a forensic medical examination by a qualified licensed health care professional."); Mo. Ann. Stat. § 595.220 (2020) ("[A] minor may consent to examination under this section. Such consent is not subject to disaffirmance because of minority, and consent of parent or

services, such as DNA collection, for their minor child. **Collectively, these laws suggest that a parent—not the minor victim—has the legal authority to consent to (or withhold consent for) a forensic medical exam for a minor victim.**

For a minor victim of sexual assault, there are both advantages and disadvantages to obtaining consent for a forensic medical exam from the minor's parent instead of the minor directly. On the one hand, requiring consent from a parent could ensure parental involvement at a time of heightened vulnerability for a minor victim. On the other hand, allowing the parent to make decisions about whether an intimate body exam is performed on the minor could cause distress to a minor victim who, because of the assault, may already feel that they lack agency and control. The requirement for parental consent becomes further fraught in situations where a parent withholds consent for a forensic medical exam that the minor clearly wants or where a parent is the alleged perpetrator of or otherwise involved in the sexual assault.

This part explains what a forensic medical exam involves and explores the state and federal laws that do (or do not) help inform who is authorized to consent to a forensic medical exam for a minor. This bulletin also addresses other legal considerations, including situations in which a parent withholds consent, legal liability for the professionals who perform forensic medical exams, and whether performing an exam without proper consent could result in the exclusion of evidence in a subsequent criminal case.

Basics of a Forensic Medical Exam

Distinction from Health Care or CMEs

It is important to clarify at the outset of this section that a forensic medical exam is not health care. A *forensic medical examination* is defined in state law as "an examination provided to a sexual assault victim by medical personnel trained to *gather evidence of a sexual assault in a manner suitable for use in a court of law* and includes collection and evaluation of physical evidence."[4] The distinction between health care and a forensic medical exam for the purpose of

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guardian of the minor is not required for such examination. The appropriate medical provider making the examination shall give written notice to the parent or guardian of a minor that such an examination has taken place."); Cal. Fam. Code § 6928 (West 2019) ("A minor who is alleged to have been sexually assaulted may consent to medical care related to the diagnosis and treatment of the condition, and the collection of medical evidence with regard to the alleged sexual assault."); Md. Code Ann., Health-Gen. § 20-102 (West 2019) ("A minor has the same capacity as an adult to consent to: . . . (6) Physical examination and treatment of injuries from an alleged rape or sexual offense; (7) Physical examination to obtain evidence of an alleged rape or sexual offense. . . ."); 22 Me. Stat. tit. 22, § 1507 (2016) ("[A] minor may consent to health services associated with a sexual assault forensic examination to collect evidence after an alleged sexual assault."); N.J. Stat. Ann. § 9:17A-4 (2026) ("The consent to . . . a forensic sexual assault examination . . . by a minor . . . who, in the judgment of the treating health care professional, appears to have been sexually assaulted, shall be valid and binding as if the minor had achieved the age of majority. . . . In the case of a minor who appears to have been sexually assaulted, the minor's parents or guardian shall be notified immediately, unless the treating healthcare professional believes that it is in the best interests of the patient not to do so."); N.D. Cent. Code § 14-10-17.1 (2015) ("A physician or other health care provider may provide emergency medical care or forensic services to a minor who is a victim of sexual assault without the consent of the minor's parent or guardian. Reasonable steps must be made to notify the minor's parent or guardian of the care provided.").

4. Title 14B, Chapter 19A, Section .0102(4) of the North Carolina Administrative Code (hereinafter N.C.A.C.) (emphasis added). See also G.S. 143B-1200(i)(1), defining *forensic medical evaluation* for the purpose of the state's Assistance Program for Victims of Rape and Sex Offenses (sometimes also called the Rape Victims Assistance Program or RVAP).

obtaining consent is also recognized in guidance by the federal Office on Violence Against Women, which states: "There are two aspects of the consent process that must be addressed—one that attends to the medical evaluation and treatment and the other to the sample collection for the sexual assault evidence collection kit."[5]

Whether a forensic medical exam is health care is a common point of confusion, which is likely due to several factors. First, forensic medical exams must be conducted by health professionals with special training.[6] Second, and as a natural result of the requirement that exams be conducted by specially trained health professionals, many (though not all) forensic medical exams occur in a health care setting, such as a hospital emergency department.[7] Finally, victims are sometimes offered health services, such as emergency contraception or sexually transmitted infection (STI) testing, either by referral or during the same encounter when the forensic medical exam is conducted. These health services and who can consent to them are discussed in Part Two.

Correctly distinguishing forensic medical examinations from health care is important for determining who has legal authority to consent to these exams. This important distinction can help health professionals avoid erroneous

Hearsay Exceptions and Statements Made for Purposes of Medical Diagnosis or Treatment

The scope of this bulletin is limited to legal questions about consent, and readers should be careful about extending the conclusions and analysis herein to other legal issues. For example, the fact that a forensic medical exam is not health care is relevant to the question of who has authority to consent to the exam. That fact does not, however, unilaterally determine whether statements made during a forensic medical exam are admissible under Rule 803(4) of the North Carolina Rules of Evidence as statements made for the purposes of medical diagnosis or treatment. Whether the Rule 803(4) hearsay exception applies requires a fact-specific analysis.

Whether a statement is admissible under Rule 803(4) will largely depend on whether the declarant made the statement with the intent and expectation the statement would enable them to receive appropriate medical care.[a] Although legal and health professionals should understand the distinctions between a forensic medical exam and health care, lay people—including the minor receiving the exam—may think about the issue differently. By law, forensic medical exams must be conducted by health-care professionals.[b] Many forensic medical exams take place in an emergency department or other health care facility. It is common for the health professional to make referrals for or directly offer health services, such as STI testing, injury care, or post-exposure prophylaxis, during the same appointment at which the forensic medical exam is provided.

For further discussion about hearsay exceptions and the rules of evidence, please see Heinle and Daniel Spiegel, *Evidence Issues in Criminal Cases Involving Child Victims and Child Witnesses*, NC Superior Court Judges' Benchbook (May 2026), https://benchbook.sog.unc.edu/evidence/criminal-cases-involving-child-victims-and-child-witnesses.

a. State v. Hinnant, 351 N.C. 277 (2000); *see also* State v. Brown, 296 N.C. App. 684 (2024) (fifteen-year-old's statements during forensic interview were properly admitted under Rule 803(4) where evidence demonstrated the child understood that the purpose of her statements was for medical diagnosis and treatment—e.g., the interviewer informed the victim that a medical examination was part of the process, the victim expressed concern that the visit would be billed to her father's health insurance, the interview was held immediately prior to a medical examination, and the interviewer's questions primarily focused on the child's health and safety—and her statements regarding her physical and mental health, safety, and possible trauma to her mind and body were reasonably pertinent to diagnosis and treatment).

b. 14B N.C.A.C. 19A, § .0102(4), (7).

5. *See* U.S. Dep't of Justice, Off. on Violence Against Women, A National Protocol for Sexual Assault Medical Forensic Examinations: Adults/Adolescents (3d ed. 2024), https://www.justice.gov/ovw/media/1367191/dl?inline.

6. 14B N.C.A.C. 19A, § .0102(4).

7. Some forensic medical exams may be performed by trained health professionals in non-health care settings, such as rape crisis centers.

reliance on consent laws that are specific to health care (such as North Carolina's minor's consent law, Chapter 90, Section 21.5 of the North Carolina General Statutes (hereinafter G.S.)) when obtaining consent for a forensic medical exam.

A forensic medical exam is also not the same as a child medical evaluation (CME). A *CME* is defined under state law as a medical evaluation of a child done at the request of a local department of social services (DSS) or law enforcement when the agency is investigating possible child abuse and neglect. A CME can only be conducted by a physician, nurse practitioner, or physician assistant who meets certain state requirements and is also rostered with the North Carolina Child Medical Evaluation Program.[8]

While a forensic medical exam focuses on collecting evidence related to an alleged sexual assault, a CME is much more expansive and usually includes the following: forensic interview; photographs of any injuries; review of the child's previous medical records; taking a history of the child's health, medications, development and education, and mental health; taking a family health history; review of vitals and growth parameters (e.g., heart rate, temperature, weight, height); laboratory testing and radiological studies; an anogenital exam; assessment of vision, hearing, lungs, and heart; and more.[9] Forensic medical exams are typically most useful shortly after an assault occurs and when evidence (such as fingernail scrapings, dirt, fibers, blood, or DNA) is still available to collect. By contrast, a CME might be performed at any point when suspected child abuse or neglect is under investigation by DSS or law enforcement, which in some cases could be years after the alleged child maltreatment occurred.

SAECK Collection and Processing

A sexual assault examination collection kit, or SAECK—sometimes referred to as a "rape kit"—is used to conduct the forensic medical exam, which must be done by a medical professional trained to gather evidence.[10] An SAECK is a standardized, prepackaged kit that includes instructions, documentation forms, and items necessary to collect evidence such as swabs, vials, and plastic bags. The evidence collected using an SAECK can include photos of injuries on the victim's body; the victim's clothing; fingernail scrapings; other human biological material, such as skin cells, hair, blood, semen, or urine; trace evidence, such as dirt or fibers; the victim's blood, which may be tested to determine whether intoxicating substances were involved; and the victim's DNA, which is compared against other DNA collected to confirm the presence of DNA that came from someone else. Victims may decline any part of the exam and evidence collection.[11]

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8. G.S. 108A-77.1(4).

9. *Forms: Child Medical Evaluation (CME)*, "Child Medical Evaluation Referral and Report" (July 2021), Univ. of N.C. Sch. of Med., Dep't of Pediatrics, https://www.med.unc.edu/pediatrics/cmep/forms/. *See also Child Medical Evaluations in North Carolina*, N.C. Dep't of Health and Human Servs, https://www.youtube.com/watch?v=L1cziGUcpWM&t=61s (last visited Aug. 8, 2026).

10. 14B N.C.A.C. 19A, § .0102(5). The professionals who conduct these exams are often sexual assault nurse examiners, or SANEs. For more information about SANE requirements, see *Frequently Asked Questions | Sexual Assault Nurse Examiner (SANE)*, N.C Bd. of Nursing, (Mar. 2024), https://perma.cc/TBP5-FHQR.

11. This is a standard practice. *See, e.g.*, Sexual Assault Kit Initiative, *Considerations for Optimal Timeframes for DNA Forensic Evidence Collection from Sexual Assault Cases: A SAKI Recommendation*, RTI Int'l, https://www.sakitta.org/effective-practices/docs/Considerations-for-Optimal-Timeframes-for-DNA-Forensic-Evidence.pdf (last visited Aug. 10, 2026); *Getting a Sexual Assault Forensic Exam (SAFE)*, RAINN, https://rainn.org/2240/getting-a-sexual-assault-forensic-exam-safe/ (last visited Aug. 10, 2026).

Once the SAECK collection is finished, the evidence is sealed inside the box the SAECK supplies came in and custody of the SAECK is turned over to law enforcement.[12] Whether the SAECK is immediately sent for processing or held indefinitely in secure storage will depend on whether the kit is reported or unreported. When an SAECK is "reported," law enforcement submits the kit to the State Crime Laboratory (SCL) or an SCL-approved laboratory for the kit to be unsealed and its contents tested. By contrast, an "unreported" SAECK is sent to the North Carolina Department of Public Safety to be securely stored unless and until the victim seeks to make the SAECK contents available to law enforcement for investigation into the alleged sexual assault.[13]

"Anonymous" Kits and Mandatory Reporting

In practice, unreported kits are sometimes referred to as "anonymous" kits, though this is a misnomer. Regardless of whether the SAECK is reported or unreported, there is no information on the outside of the completed and packaged SAECK box that identifies the victim from whom the kit was collected. When an SAECK is unsealed because its contents will be tested by a laboratory, the person who unseals the kit can access paperwork inside the kit that identifies the victim and explains how the SAECK was collected. Currently the law does not provide a process for a victim who wants their kit tested by the SCL or SCL-approved laboratory but who does not wish to reveal their identity, information about the alleged assault, or the kit's test results.

Whether an SAECK is reported or unreported is a separate legal matter from whether the health professional performing the forensic medical exam is required by law to report the alleged assault to law enforcement. Under G.S. 14-318.6, an adult who knows or reasonably should have known that a juvenile[14] has been or is the victim of a violent offense, a sexual offense, or misdemeanor child abuse must make a report to law enforcement.[15] It is possible to encounter situations where a report to law enforcement is required by G.S. 14-318.6 *and* the minor victim's SAECK remains unreported under G.S. 15A-266.5A.

G.S. 14-318.6 does not require reporting by certain types of professionals who have privilege with the minor victim.[16] Among these exempted professionals are certain agents of domestic violence programs and rape crisis centers whose work is privileged under G.S. 8-53.12. Many health professionals who perform forensic medical exams work in multiple settings and it can be difficult to know when the professional is, or is not, a mandated reporter. For example, a sexual assault nurse examiner (SANE) who is on call for the local rape crisis center and conducts a forensic medical exam for a sixteen-year-old victim of first-degree forceable rape would not be required to report the sexual assault to law enforcement because of the exception for agents of rape crisis centers.[17] However, if later that week the same nurse was working as a SANE in the

12. G.S. 15A-266.5A(c)(1).
13. *See* G.S. 15A-266.5A(b) through (f).
14. G.S. 14-318.6 uses the term "juvenile" rather than "minor." For the purposes of G.S. 14-318.6, *juvenile* is defined as "[a] person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the Armed Forces of the United States." The individual's age when the abuse or criminal offense occurred is determinative of whether the individual is a "juvenile." *See* G.S. 14-318.6(a)(1).
15. G.S. 14-318.6(b). *See* G.S. 14-318.6(a)(4) (defining *violent offense*); 14-208.6(5) (identifying crimes that constitute a sexually violent offense); 14-318.2 (misdemeanor child abuse).
16. G.S. 14-318.6(h).
17. *Id.*

local hospital's emergency department and saw a similar victim (sixteen-year-old victim of first-degree forceable rape), then the SANE *would* be required to make a report because none of the law's reporting exceptions apply.

Although G.S. 14-318.6 exempts some professionals from having to report to law enforcement, health professionals should remember that there are no similar exceptions to the separate North Carolina law (G.S. 7B-301) that creates a *universal* requirement to make a report to DSS when there is reason to suspect that a minor is abused, neglected, or dependent.

The Role of DNA Evidence Collection

Although many types of evidence can be collected during a forensic medical exam, DNA can be one of the most useful forms of evidence for identifying and convicting a perpetrator. The North Carolina legislature highlighted the important role of DNA collection in sexual assault cases in a 2019 law, stating: "The General Assembly finds that deoxyribonucleic acid (DNA) evidence is a powerful law enforcement tool that can identify unknown suspects, create case linkages, connect crimes to known perpetrators, and exonerate the innocent."[18] Research also suggests that jurors in criminal cases expect to be presented with DNA evidence, particularly for offenses such as rape.[19]

An SAECK includes supplies to collect evidence left behind by the perpetrator, but also the victim's DNA. The specimens collected during a forensic medical exam—such as vaginal swabs or nail scrapings—may contain a mixture of DNA that comes from more than one person. Analysts use a victim's DNA to identify other DNA that is "foreign," which means it belongs to someone other than the victim. This process involves "subtracting" the victim's DNA profile from any other DNA found in other materials collected as part of the SAECK. Although a victim can decline this part of the exam, not having the victim's DNA available for reference can significantly limit the information that can be gleaned by the SCL, which oversees processing of reported SAECKs.[20] If this subtraction process cannot be completed to exclude the victim's DNA, then the potentially intermixed, multi-person genetic information obtained from the sample may be ineligible for submission to the Combined DNA Index System (CODIS).[21] CODIS is a database managed by the Federal Bureau of Investigation that contains DNA records of individuals who have been previously arrested for or convicted of certain crimes.[22] A reference sample of the victim's DNA can be useful in other ways, too. For example, if the victim reports that the sexual assault occurred in the perpetrator's car, then the victim's reference sample could be compared against any DNA found in the vehicle.

Conducting an SAECK collection as soon as possible after the sexual assault increases the likelihood that usable forensic evidence can be gathered and preserved. Recommendations vary, but many sources suggest that DNA evidence, in particular, must be collected no later than three to five days after the sexual assault, depending on the type of assault and the biological material

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18. G.S. 15A-266.5A(a).

19. Donald E. Shelton, *The "CSI Effect": Does It Really Exist?*, Nat'l Inst. of Just. J. (Mar. 16, 2008), https://nij.ojp.gov/topics/articles/csi-effect-does-it-really-exist.

20. See G.S. 15A-266.5A, assigning responsibility for processing sexual assault examination kits (SAECKs) to the North Carolina State Crime Laboratory or its approved subcontractor laboratory.

21. Email from N.C. Dep't of Just. Crime Lab analysts to author (Apr. 13, 2026) (on file with author). *See also* Fed. Bureau of Investigation Lab'y, National DNA Index System (NDIS) Operational Procedures Manual, version 14 § 3.1.1.1 (July 1, 2025), https://perma.cc/6PWH-FH89.

22. G.S. 15A-266.2(a1), -266.3A, -266.4.

to be collected (e.g., blood versus semen).[23] The time restraints on DNA evidence collection underscore the need for greater clarity about whose consent must be obtained to authorize a forensic medical exam. Uncertainty about the law and hesitation to provide services could result in missed opportunities to collect undegraded, higher quality DNA evidence, which in turn could impact the outcome of a future criminal proceeding.

Legal Analysis: Consent to a Minor's Forensic Medical Exam

No North Carolina or federal laws directly address the question of who is authorized to consent to a forensic medical exam when the sexual assault victim is a minor. Therefore, the following sections instead analyze some of the laws that establish the general authority of parents in relationship to their children, laws that govern the provision of certain services to sexual assault victims of any age, and laws that apply in the adjacent (but separate) context of providing health services to minors.

This discussion is divided into two parts. The first addresses laws and legal concepts responsive to questions about consent to a minor's forensic medical exam. The second part briefly reviews a handful of laws that initially might appear on point but that ultimately do not govern this type of consent.

Relevant Law

A Parent's Constitutional Rights

Both the United States Supreme Court (hereinafter SCOTUS) and the North Carolina Supreme Court have recognized that parents have certain constitutional rights regarding making decisions about their minor child. In *Troxel v. Granville*, SCOTUS reaffirmed "the fundamental right of parents to make decisions concerning the care, custody, and control of their children," a right that stems from the Fourteenth Amendment's Due Process Clause.[24] Those parental rights are not absolute, however, and can be curtailed if a court finds a parent is unfit and not acting in the minor child's best interest.[25] Additionally, SCOTUS has upheld the constitutionality of certain legislation (particularly in the context of child labor) intended to protect children's safety and wellbeing, even when implementation of those laws restricts parental authority.[26]

The North Carolina Supreme Court has drawn numerous similar conclusions about a parent's constitutional right to the "custody, care, and nurture"[27] of the parent's minor child as well as restricting that right "when the good of the child clearly requires it."[28] The court has rendered most of these decisions in child welfare and custody cases. In 2025, however, the North Carolina Supreme Court addressed the topic of parental custody and control in the context of health

23. Sexual Assault Kit Initiative, *supra* note 11; RAINN, *supra* note 11 .

24. 530 U.S. 57, 65–66 (2000). *See also* Lassiter v. Dep't of Soc. Servs., 452 U.S. 18 (1981).

25. *See Troxel*, 530 U.S. 57; Parham v. J.R., 442 U.S. 584 (1979).

26. *E.g.*, Prince v. Massachusetts, 321 U.S. 158 (1944).

27. *In re* E.B., 375 N.C. 310, 315 (2020) (referring to a parent's right to the "custody, care, and nurture" of their child); *see also* Petersen v. Rogers, 337 N.C. 397, 402 (1994).

28. Atkinson v. Downing, 175 N.C. 244, 244 (1918) ("It is fully recognized in this state that parents have prima facie the right to the custody and control of their infant children, a natural and substantive right not to be lightly denied or interfered with, except when the good of the child clearly requires it"). *See also* Happel v. Guilford Cnty. Bd. of Educ., 387 N.C. 186, 194 (2025) (*Happel I*).

care. *Happel v. Guilford County Board of Education* involved an immunization purportedly administered to a minor child without the consent of the minor's parents. In its decision, the court explained:

> Indeed, the constitutional right to full 'custody and control' over one's minor children would ring hollow if it did not include the right to consent [to health care] on the child's behalf,. . . . Our state constitution and caselaw have long implied the existence of the precise right plaintiffs claim here. We directly recognize it today."[29] The court further opined that the North Carolina Constitution "protects both a parent's right to control her child's upbringing and the right to bodily integrity. . . .[30]

Because the *Happel* case focused on health care—which, as previously discussed, is distinct from the purpose and function of a forensic medical exam—it is not directly on point when considering the question of consent to a minor's forensic medical exam. Nevertheless, *Happel* is significant because it is yet another decision in the courts' longstanding line of opinions that have repeatedly recognized the authority of parents regarding the care, custody, and control of their minor children. Although there does not appear to be any federal or North Carolina case law that examines these parental rights in the context of forensic medical exams, the existing case law weighs heavily in favor of a conclusion that a parent has authority to consent to (or withhold consent for) their minor child's forensic medical exam.

Blood, DNA, and the Parents' Bill of Rights

SAECK collection often involves collecting blood, DNA, or both from the victim. A victim's blood might be tested to determine whether any impairing substances were in the victim's system around the time of the assault. The victim's DNA can confirm the presence of foreign DNA on the victim's body or belongings and may also prove that the victim was present in a particular location, such as where the assault occurred (e.g., in the alleged perpetrator's vehicle). Yet several legal issues relate to the storage and sharing of a minor victim's blood and DNA. In 2023, the North Carolina legislature enacted Chapter 114A of the General Statutes, titled the Parents' Bill of Rights.[31] The new law established, among other things, the rights of parents to "prohibit the creation, sharing, or storage of his or her child's blood or deoxyribonucleic acid (DNA) without the parent's prior written consent, except as authorized pursuant to a court order or otherwise required by law, including G.S. 7B-2201."[32]

The Parents' Bill of Rights does not specifically address forensic medical exams, and no part of the exam process involves the "creation" of any blood or DNA. The Parents' Bill of Rights would seem to apply, however, to the "storage" and "sharing" of a minor victim's blood or DNA that occurs when the forensic medical exam involves collection of blood for testing or of the minor's DNA as a reference sample. However, the provision in the Parents' Bill of Rights that addresses a child's blood and DNA is narrow in its scope. The statute does not, by itself, confer

29. *Happel I*, 387 N.C. at 200.

30. *Id.* The North Carolina Supreme Court in *Happel* located the right at issue in the law-of-the-land clause, N.C. Const. art. I, § 19, the earlier state analogue of the federal due process clause.

31. S.L. 2023-106, pt. I, § 1.

32. G.S. 114A-10(8). The statute referenced here—G.S. 7B-2201—governs fingerprinting and collection of DNA from juveniles charged with certain criminal offenses and whose cases have been transferred from district court as a juvenile proceeding to superior court as a criminal proceeding. No North Carolina law requires the collection, storage, or sharing of a minor's blood or DNA in the context of a forensic medical exam.

upon parents the wholesale authority to consent (or withhold consent) to all parts of a forensic medical exam. Instead, the law gives a parent a limited right related to the part of the exam that involves storage and sharing of the minor's DNA or blood as part of a completed SAECK.

Inapplicable Law

VAWA

In many instances, the work of health professionals who conduct forensic medical exams is supported by grant funds administered by the United States Department of Justice (DOJ) and pursuant to the Violence Against Women Act of 1994 (VAWA). VAWA and the administrative regulations that apply to grant recipients establish numerous requirements related to the collection of forensic evidence, confidentiality of victim information, and more.[33] However, neither VAWA nor the grant regulations address who is authorized to consent to a forensic medical exam. Rather, guidance from DOJ on these exams refers health professionals back to their own state's law and instructs them to "follow the law in their jurisdiction governing consent and access to care."[34]

North Carolina's Minor's Consent Law

North Carolina's minor's consent law appears at G.S. 90-21.5(a). When a minor victim of sexual assault comes in for a forensic medical exam, the health professional conducting the exam might offer certain health services, such as STI testing, post-exposure prophylaxis, or emergency contraception. The health professional might offer to provide these services during the same appointment as when the forensic medical exam is performed or might make a referral or follow-up appointment so the minor can access these health services at a later time. In some instances, a minor may be able to consent to some of these health services on their own (and without parental consent) under G.S. 90-21.5(a).

The forensic medical exam, however, does not fall within the scope of G.S. 90-21.5(a). The purpose of a forensic medical exam is evidence collection, not the provision of medical care.[35] Additionally, the services that may be consented to under G.S. 90-21.5(a) are limited to prevention, diagnosis, and treatment of venereal and other reportable diseases; pregnancy; abuse of controlled substances or alcohol; and emotional disturbance.[36] The components of a forensic medical exam and SAECK collection do not fit within these categories. Therefore, the minor's consent law cannot be used as the basis for allowing a minor to independently consent to a forensic medical exam.

33. *Grants*, U.S. Dep't of Just., Off. on Violence Against Women, https://www.justice.gov/ovw/grants (last visited Aug. 10, 2026). For the administrative regulations, see 28 C.F.R. § 90.

34. *See* Office on Violence Against Women, *supra* note 5, at 42.

35. *See id.* at 37 ("There are two aspects of the consent process that must be addressed—one that attends to the medical evaluation and treatment and the other to the sample collection for the sexual assault evidence collection kit."). See also *supra* note 3, referring to states with laws that distinguish between legal authority for a minor to consent to health care versus a forensic medical exam.

36. G.S. 90-21.5(a).

North Carolina's Parental Consent for Treatment Laws

In 2023, the North Carolina legislature created a new section in G.S. Chapter 90 titled Parental Consent for Treatment. The laws prohibit a health care practitioner from providing, soliciting, or arranging "treatment" for a minor without first obtaining written or documented consent from the minor's parent, unless an exception applies.[37] The term *treatment* is defined in the law as

> [a]ny medical procedure or treatment, including X-rays, the administration of drugs, blood transfusions, use of anesthetics, and laboratory or other diagnostic procedures employed by or ordered by a health care practitioner, that is used, employed, or ordered to be used or employed commensurate with the exercise of reasonable care and equal to the standards of medical practice normally employed in the community where the health care practitioner administers treatment to the minor child.[38]

Like North Carolina's minor's consent law, North Carolina's Parental Consent for Treatment laws address health care, but not other services. Although the recent enactment of the Parental Consent for Treatment laws could be interpreted as signaling the value the legislature places on parental authority, these laws do not extend to non-health services and hence do not establish a parental consent requirement for forensic medical exams.

North Carolina's SAECK Testing Protocol Statute and Victim Consent

State law clearly contemplates that consent will be obtained for forensic medical exams, which are conducted using an SAECK. The statute that establishes the statewide testing protocol for SAECKs includes definitions for the terms *reported sexual assault examination kit* and *unreported sexual assault examination kit*.[39] Both definitions describe kits "collected *from a person who consented* to the collection of the sexual assault examination kit."[40] The language in G.S. 15A-266.5A suggests that the person who consents to the SAECK and the person "from" whom the SAECK is collected are the same. In the case of a minor victim, this would seem to imply that the minor is an appropriate party to consent to the forensic medical exam.

There are multiple issues, however, with interpreting this snippet of statutory language to mean that minor victims are always the correct party to consent to the forensic medical exam. First, the language about "a person who consented" to the exam is found in the definition section of the statute, making it unlikely that the legislature meant for the language to be read as the final word on who consents to a forensic medical exam for minor victims of sexual assault. Practical challenges would also arise from always allowing minor victims to independently consent to a forensic medical exam. Such an approach might be workable in situations involving older minors, but younger minors are unlikely to have the maturity and cognitive development necessary to meaningfully consent to a forensic medical exam. Additionally, the Parents' Bill of Rights—discussed above—requires prior written parental consent for the sharing or storage of a child's DNA or blood. Therefore, even if a minor were permitted to independently consent to a forensic medical exam, the collecting agency would be precluded from storing or sharing

37. G.S. Ch. 90, art. 1A, pt. 3. For additional information about S.L. 2023-106, please see Kirsten E. Leloudis, *Consent to Care for Minor Patients: An Update on the Legal Landscape After S.L. 2023-106, Part III*, Health L. Bull. No. 92 (UNC School of Government, 2024), https://www.sog.unc.edu/sites/default/files/reports/2024-01-10B%202023146_HLB_92_0.pdf.

38. G.S. 90-21.10A(7).

39. G.S. 15A-266.5A(b)(3), -266.5A(b)(6).

40. *Id.* (emphasis added).

the minor's DNA or blood without parental authorization. As explained in the previous section describing a forensic medical exam, obtaining a reference sample of the victim's DNA, in particular, can help successfully identify foreign DNA left behind by a perpetrator.

Next Steps: Parental Consent, Minor's Assent, and Challenges

As established above, North Carolina law does not provide clear instruction on who is authorized to give consent for a minor's forensic medical exam; nevertheless, the health professionals who serve minor victims of sexual assault need a reasonable way to proceed considering the current legal landscape. One such approach would be to (1) obtain parental consent for all forensic medical exams involving a minor ***and*** (2) obtain the minor's assent to the exam.

This approach is not without its complexities, though. Because a minor cannot consent to their own forensic medical exam, their access to the exam turns entirely on whether their parent will consent—and in some situations, a parent will not give that requisite permission. A parent might withhold consent for their minor child to receive a forensic medical exam for various reasons. For example, a parent might believe their child has been harmed but does not want to subject the child to a potentially intimate and invasive exam. Alternatively, a parent might withhold consent to an exam because they *do not* believe their child was assaulted, even if the child presents with a story, injuries, behaviors, or other indicators that appear to substantiate a sexual assault allegation. A parent might also refuse to consent to a forensic medical exam because the parent, or someone whom the parent wishes to protect, is the alleged perpetrator.

Regardless of why a parent withholds consent, these situations can create tension between the authority of parents regarding their children and public policy concerns of the government related to child welfare, public safety, and prevention of future crimes. While there are limited options that health professionals can explore, ultimately no North Carolina law provides clear instruction on navigating these especially complicated scenarios.

Parental Consent and Minor Assent

Recognizing a minor's parent as the party authorized to consent to a forensic medical exam for the minor is harmonious with federal and state case law that has repeatedly upheld parents' constitutional rights to the care, custody, and control of their children.[41] This approach also aligns with discrete requirements related to parental rights as set out in the Parents' Bill of Rights. The Parents' Bill of Rights gives parents control over the storage and sharing of their child's blood and DNA, both of which are common (albeit not required) components of a forensic medical exam. Collection of the minor victim's DNA as a reference sample can be particularly important to subsequent investigations and prosecutions when an assault leads to criminal charges. Seeking parental consent is also practical for situations that involve minors (especially younger minors) who lack the decisional capacity necessary to make an informed decision to receive a forensic medical exam.

Even when parental consent is obtained, health professionals should always also seek the assent of the minor victim before performing the forensic medical exam. In the context of this exam, assent by a minor victim is a demonstrated agreement or willingness to participate in and be the subject of the exam.[42] Assent by the minor victim is important for several reasons. First, practically speaking, it could be challenging to conduct a forensic medical exam on a young

41. Troxel v. Granville, 530 U.S. 57, 65–66 (2000). *See also* Lassiter v. Dep't of Soc. Servs., 452 U.S. 18 (1981).
42. *Assent*, Black's Law Dictionary (12th ed. 2024).

person who does not assent. The young person might, for example, express that disagreement by refusing to be still, fighting back, or otherwise impeding the exam. Second, assent is a critical component of trauma-informed care.[43]

In addition to physical harm, a sexual assault can cause psychological injury when a person's autonomy, sense of personal safety, and agency are violated. The experience of these violations can be traumatizing. Subsequent situations where a victim's autonomy and wishes are ignored—such as being forcibly subjected to a forensic medical exam—can add to that trauma and harm. For this reason, obtaining the victim's assent, regardless of who gave consent for the forensic medical exam, is widely recognized as a best practice.[44]

Challenges with Parental Consent

One Parent Withholds Consent, Other Parent Consents

Generally, a child's parents are presumed to have equal legal authority to make decisions for their child and can exercise that authority unilaterally unless and until a court orders otherwise, such as in the case of custody orders.[45]

In scenarios where one parent withholds consent for a child's forensic medical exam, there may be additional pathways for obtaining legal authorization to conduct a forensic medical exam for the minor victim. If the child has two parents and Parent A will not consent to the exam, one option is to seek consent from Parent B. Although one parent's consent is typically sufficient when both parents have full and equal legal custody of the minor child, some organizations have a policy of not delivering services over the second parent's objection. Health professionals who conduct forensic medical exams should ensure they are familiar with their own organization's policies on this matter and consult with legal counsel, as appropriate.

Suspected Child Abuse, Neglect, Dependency

In some situations where a parent withholds consent to a forensic medical exam, it will be necessary to make a report to DSS because: (1) a parent is alleged to have perpetrated, caused, or otherwise allowed the sexual assault of the child and those actions create cause to suspect child abuse, neglect, or dependency or (2) there is some other basis for the health professional to suspect that the child is abused, neglected, or dependent.[46] The mandated reporting requirement for abuse, neglect, or dependency is universal, meaning it applies to any person or institution.[47] Although one might believe that certain professionals are exempt on the basis of privilege, North

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43. Jennifer L. Austin, Adithyan Rajaraman, and Lauren Beaulieu, *Facilitating Greater Understanding of Trauma-Informed Care in Applied Behavior Analysis: An Introduction to the Special Issue*, Behav. Analysis in Prac. 17, 669–78 (2024), https://pmc.ncbi.nlm.nih.gov/articles/PMC11461371/.

44. *See, e.g.*, Office on Violence Against Women, *supra* note 5, at 42 ("In situations where legal consent is obtained through a third party, the patient must still be willing to participate (i.e., the patient must assent). That is, clinicians should not force a patient to undergo an exam if it is clear that they do not want to participate. For example, clinicians should not examine an adolescent if they do not want the exam, even if their parents want an examination done."). *See also* Michelle Bowdler & Hannah Kent, *Should a Physician Comply with a Parent's Demands for a Forensic Exam on a 16-Year-Old Trauma Patient?*, Am. Med. Ass'n J. of Ethics, Jan. 2018, https://journalofethics.ama-assn.org/article/should-physician-comply-parents-demands-forensic-exam-16-year-old-trauma-patient/2018-01.

45. Routten v. Routten, 374 N.C. 571 (2020); Rosero v. Blake, 357 N.C. 193 (2003).

46. See G.S. 7B-301 for North Carolina's law mandating universal reporting of suspected child abuse, neglect, and dependency; *see also* G.S. 7B-101(1), (9), (15) (definitions of *abused juveniles*, *dependent juvenile*, and *neglected juvenile*, respectively).

47. G.S. 7B-301.

Carolina law provides an exception only for an attorney representing a client in an abuse, neglect, or dependency case.[48] Health care professionals must make a report to DSS if they have cause to suspect child abuse, neglect, or dependency. Health care professionals should also always consider whether a separate report must be made to law enforcement under G.S. 14-318.6.[49]

If the report made to DSS is "screened in" because the allegations meet the legal definitions of abuse, neglect, or dependency, then DSS must conduct an assessment.[50] If the assessment indicates that abuse, neglect, or dependency has occurred, then DSS must determine whether it is necessary to immediately remove the child from the home. If removal is not necessary, protective services must be arranged for the child. If the child's parent, guardian, custodian, or caretaker refuses protective services, or if DSS decides removal *is* necessary, DSS must file a petition in district court.[51] Once a petition is filed and district court has jurisdiction over the case, if DSS has custody of the juvenile either through a nonsecure custody order or later in the case a dispositional order, DSS can seek a court order authorizing it to consent to a CME.[52] A CME is not limited to (and sometimes will not even involve) sexual assault evidence collection. Rather, a CME is a comprehensive, head-to-toe medical exam intended to diagnose child abuse or neglect and to identify the child's other health needs.

If a forensic medical exam is needed instead of a CME, questions about who can consent to the forensic medical examination remain. If the child has not been removed from the custody of their parent, that parent may consent. If custody has been placed with DSS, DSS may be able to consent to a forensic medical exam because state law gives DSS the authority to make certain decisions that otherwise a custodian generally would make.[53] If the authority of DSS to consent is in question, DSS may request a court order authorizing it to consent to a forensic medical exam for the minor victim. In these situations, DSS should consult with health professionals who conduct forensic medical exams to assess whether there is still an opportunity to collect evidence given any time that has lapsed since the alleged sexual assault. In many cases, the window for collecting evidence—which is usually short, particularly for DNA evidence—will have passed by the time DSS is involved and the court has jurisdiction over the abuse, neglect, or dependency case.

Other Scenarios and the Gap in the Law

There are scenarios where neither of the aforementioned fact patterns apply—that is, a situation may arise where (1) a minor who says they have been sexually assaulted wants a forensic medical exam and (2) no parent is willing or available to consent to the forensic medical exam and there is no suspected child abuse, neglect, or dependency that merits involving DSS. Under current North Carolina law, there does not appear to be a path forward for the young people in these situations who say they have been harmed and are asking for help in the form of a forensic medical exam.

48. G.S. 7B-310.

49. G.S. 14-318.6 requires an adult who "knows or should have reasonably known that a juvenile has been or is the victim of a violent offense, sexual offense, or misdemeanor child abuse" to make a report to law enforcement. There are limited exceptions to this reporting requirement for certain types of professionals who have privilege with the victim, such as attorneys and agents of rape crisis or domestic violence centers. G.S. 14-318.6(h). See the section above discussing SAECK collection and processing.

50. G.S. 7B-302(a).

51. G.S. 7B-302(c)–(d).

52. G.S. 7B-505.1(b), (c); -903.1(e).

53. *See* G.S. 7B-903.1(a).

This outcome may be hard for the minor to understand or accept. When situations like this occur, the health professionals, lawyers, law enforcement, and others working with the minor should, to the extent possible, try to connect the minor to other types of post-sexual-assault support services that might be available, such as support groups or therapy services.

Additional Legal Considerations

Liability for Health Professionals

The health professionals who conduct forensic medical exams for minors may have concerns about their legal exposure given the lack of clear legal standards for obtaining consent. It is not obvious, though, what form a successful legal claim might take when the basis for complaint is that the health care professional did not obtain consent from the correct party. The statute that establishes a statewide SAECK testing protocol does not include any enforcement provisions related to failure to obtain consent from the appropriate party.[54] Similarly, the Parents' Bill of Rights, which allows parents to prohibit the storage and sharing of their child's blood and DNA, does not identify any specific penalties for a person who infringes on that parental authority.[55]

A minor's parent who believes that a forensic medical exam was conducted without consent from an appropriate party could bring a civil claim for tortious "battery," which is the offensive touching of another person without that person's consent.[56] To prove liability for tortious battery, a plaintiff does not have to prove that the respondent (or "defendant") intended to cause harm or injury, or that the nonconsensual contact actually resulted in any harm or injury.[57] By contrast, a medical malpractice claim requires showing the patient actually experienced harm and that the harm resulted from the health care provider's acts or failures to act that were inconsistent with the standard of care.[58] At this time, North Carolina's appellate courts have not been presented with a civil tortious battery or medical malpractice claim stemming from a forensic medical exam and it is unclear how they would rule in such a case.

If a health care professional provided a forensic medical exam to a minor without parental consent, a parent might attempt to bring a *Corum* claim (as the plaintiff did in *Happel*).[59] These claims allow the plaintiff to sue the state (not the individual health professional who conducted the forensic medical exam) for some type of relief, such as money or a prohibition against taking certain actions in the future in the absence of an existing, adequate state remedy.[60] It may be difficult to establish a *Corum* claim in the context of forensic medical exams and the alleged absence of parental consent, and the success of such a claim would depend on the particular set of underlying facts in the case. A *Corum* claim is available only when the person who allegedly violated the plaintiff's constitutional rights is a "state actor." The health professionals who provide forensic medical exams work in a diversity of settings, under various

54. *See* G.S. 15A-266.5A.

55. *See* G.S. 114A-10.

56. Holleman v. Aiken, 193 N.C. App. 484 (2008). *See also* Metts v. New Hanover Reg'l Med. Ctr., 221 N.C. App. 669 (2012); Dickens v. Puryear, 302 N.C. 437, 445 (1981) ("Actions for battery protect against 'intentional and unpermitted contact with one's person.'").

57. Hawkins v. Hawkins, 101 N.C. App. 529 (1991), *decision aff'd*, 331 N.C. 743 (1992).

58. G.S. 90-21.11(2), -21.12(a). Defendants in a medical malpractice claim related to a forensic medical exam might, however, argue that forensic medical exams are not medical care, as discussed in this bulletin.

59. Happel v. Guilford Cnty. Bd. of Educ., 387 N.C. 186, 192 (2025). *See generally* Corum v. Univ. of N.C., 330 N.C. 761 (1992).

60. *Corum*, 330 N.C. 761.

types of employment arrangements, and many will likely not satisfy the "state actor" criteria.[61] Additionally, the plaintiff must present a "colorable" claim that the plaintiff's constitutional rights have been violated.[62] Here, the plaintiff would presumably argue that the violation was of their constitutional right as a parent to make certain decisions for their minor child. Finally, a *Corum* claim may proceed only if the plaintiff can show that there is "no other adequate state remedy for the alleged constitutional violation."[63] If the parent plaintiff could, for example, pursue a claim of tortious battery related to the forensic medical exam and alleged consent issues, then the court would likely determine that the plaintiff was precluded from pursuing a *Corum* claim.[64]

Evidence Challenges Related to Consent

When a sexual assault against a minor results in criminal charges being brought against an alleged perpetrator, the procedure and methods used during a forensic medical exam (if one was performed) could come under scrutiny. Prosecutors and defense attorneys, for example, may review information about the forensic medical exam to determine whether the health professional performing the exam followed the required protocols to ensure quality samples were properly collected. A failure to follow protocols may become the basis for challenging the admissibility or reliability of evidence. But does an assertion that consent for the exam was not obtained from the appropriate party pave the way for the subsequent exclusion of evidence?

The answer is likely *no*. First, state law appears to anticipate and preemptively address potential arguments about some parts of the SAECK collection, storage, and testing process. G.S. 15A-266.5A establishes the requirements for: the timely delivery of an SAECK into the custody of law enforcement, the SCL. or the state Department of Public Safety; the secure storage of SAECKs; and the systematic processing of SAECKs for investigative purposes. Subsection (g) of the statute states that noncompliance with these requirements shall not:

(1) constitute grounds upon which a person may challenge in any hearing, trial, or other court proceeding the validity of DNA evidence in any criminal or civil proceeding;
(2) justify the exclusion of evidence generated from a sexual assault examination kit; or
(3) provide a person accused or convicted of committing a crime against a victim a basis to request that the person's case be dismissed or conviction set aside, or provide a cause of action or civil claim.

As explained above, G.S. 15A-266.5A does not directly address who is authorized to consent to a forensic medical exam when the victim is a minor. Still, the statutory language that bars a defendant from challenging the evidence collected during a forensic medical exam due to lack of compliance with procedural requirements would seem to weigh in favor of a determination that evidence contained in an otherwise properly collected, stored, and processed SAECK should not be excluded solely because the defendant contends that the wrong person consented to the forensic medical exam.

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61. See *Happel v. Guilford County Board of Education*, ___ N.C. App. ___, No. COA23-487-2, 2026 WL 1740299 (N.C. Ct. App. June 17, 2026), for a discussion of "state actor" criteria and whether a private party could qualify as a state actor in a *Corum* claim.

62. Kinsley v. Ace Speedway Racing, Ltd., 386 N.C. 418, 423 (2024).

63. *Id.* (citations omitted).

64. *But see Happel I*, 387 N.C. at 210 ("Loss under tort law . . . is not equivalent to loss in the constitutional sense.").

Additionally, a defendant would likely not succeed in having the evidence suppressed based on an argument that the forensic medical exam amounted to some type of unlawful search. The defense might attempt to argue that evidence obtained without proper consent should be excluded under the Fourth Amendment to the United States Constitution.[65] This argument would likely fail, however, because a defendant lacks standing to assert a violation of someone else's rights. A defendant's Fourth Amendment rights are not violated if the problematic search involved the body of another person.[66]

Part Two: Can a Minor Consent Independently to Certain Health Services That May Be Offered Separately or at the Same Time as the Forensic Medical Exam, Such as Prevention, Testing, or Treatment for Sexually Transmitted Infections?

In North Carolina, certain minors are authorized to consent to certain health services without the concurrent consent of a parent, guardian, or person standing *in loco parentis*.[67] This authority is derived from G.S. 90-21.5(a), often referred to as North Carolina's minor's consent law. North Carolina is not unique in allowing minors to access specific health services on their own consent. All fifty states and the District of Columbia permit minors to consent to health services for STIs and most states allow certain minors to consent to other specific health services such as immunizations, dental care, contraceptives, prenatal care, substance use treatment, and mental health care.[68]

65. For more on the Fourth Amendment, the exclusionary rule, and challenges to evidence collected during unlawful searches, see *Mapp v. Ohio*, 367 U.S. 643 (1961). The term "fruits of the poisonous tree" comes from *Nardone v. United States*, 308 U.S. 338 (1939), and has evolved into a legal doctrine related to the exclusionary rule, unconstitutional searches, and admissibility of evidence.

66. Rakas v. Illinois, 439 U.S. 128, 136 (1978) ("A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed."); State v. Mlo, 335 N.C. 353, 377 (1994) ("A person's right to be free from unreasonable searches and seizures is a personal right, and only those persons whose rights have been infringed may assert the protection of the Fourth Amendment.").

67. This section focuses on the law that permits some minors to consent to a limited universe of health services on their own and without the concurrent consent of a parent or other adult. For a quick reference guide on when parents and other adults can consent to care for a minor, as well as situations in which such consent is necessary before care can be rendered, please see Kirsten Leloudis, *Consent and Common Pathways for Providing Care to Minors (the "Rainbow Chart")*, UNC School of Government (Dec. 2023), https://www.sog.unc.edu/resources/legal-summaries/consent-and-common-pathways-providing-care-minors-rainbow-chart.

68. *Sexually Transmitted Infections Treatment Guidelines, 2021: Adolescents*, U.S. Ctrs. for Disease Control & Prevention (July 22, 2021), https://www.cdc.gov/std/treatment-guidelines/adolescents.htm; Marianne Sharko et al., *State-by-State Variability in Adolescent Privacy Laws*, 149 Pediatrics 6, (2022), https://publications.aap.org/pediatrics/article/149/6/e2021053458/187003/State-by-State-Variability-in-Adolescent-Privacy?autologincheck=redirected.

Decisional Capacity as a Prerequisite to Minor's Consent

Under North Carolina's law, an unemancipated minor (referred to in this bulletin as a "minor") may consent on their own to medical health services for the prevention, diagnosis, and treatment of venereal and other reportable diseases; pregnancy; abuse of controlled substances or alcohol; and emotional disturbance.[69] Although some states' laws specify a minimum age at which minors can consent to their own health care, North Carolina's law does not.[70] Instead, whether a minor in North Carolina can access care on their own consent under G.S. 90-21.5(a) will turn on whether that minor has the decisional capacity necessary to give informed consent to the care. Notably, G.S. 90-21.5(a) never uses the term "decisional capacity"; however, decisional capacity is the basis for informed consent and is therefore required for any minor seeking to access care on their own.[71]

A health care professional will typically find that a patient (of any age) has decisional capacity if the patient can demonstrate "understanding of the situation, appreciation of the consequences of their decision, and reasoning in their thought process, and if they can communicate their wishes."[72] This requires health care providers to assess their minor patients on a case-by-case basis and make individualized determinations about whether a minor has the decisional capacity necessary to give informed consent to whichever of the health services described in G.S. 90-21.5(a) they are seeking. Anecdotally, health care providers generally do not encounter children and very young adolescents who have the decisional capacity necessary to consent to these types of care.

If a health care provider determines that a minor patient they encounter *does not* have the requisite decisional capacity, then consent of the child's parent or another party authorized by law is required.[73] If the minor patient *is* found to have decisional capacity, then a health care provider who proceeds by delivering care in accordance with the minor's consent law has certain immunity and liability protections related to that care.[74]

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69. A minor's consent alone is not sufficient to authorize the minor's abortion or sterilization or the nonemergency admission of the minor to a twenty-four-hour facility for substance use or behavioral health services. G.S. 90-21.5(a). There is also an exception to the minor's consent law, set out at G.S. 90-21.5(a1), that requires written parental consent before administering a vaccine available only under an emergency use authorization (EUA) and that has not been approved by the U.S. Food and Drug Administration. This change to the minor's consent law was effective August 20, 2021, and applies only to vaccines available under an EUA (and not to any other product, such as personal protective equipment, that may be subject to an EUA). For more information on G.S. 90-21.5(a1), please see Kirsten Leloudis, *An Update on Minor's Consent: Changes to the Law and Implications for COVID-19, Mpox, and Beyond*, Coates' Canons: N.C. Loc. Gov't L. Blog (Jan. 12, 2023), https://canons.sog.unc.edu/blog/2022/10/11/minors-consent-change-covid19-monkeypox-and-beyond/.

70. For a summary comparison of state minor's consent laws, see Abigail English and Rebecca Gudeman, *Minor Consent and Confidentiality: A Compendium of State and Federal Laws (Appendix O)*, Nat'l Ctr. for Youth L. (Aug. 2024), https://static1.squarespace.com/static/66421681d90ded764d1347e8/t/67d853200d0a27707f40ab55/1742230304441/Appendix-O-Update.pdf.

71. Craig Barstow, Brian Shahan, and Melissa Roberts, *Evaluating Medical Decision-Making Capacity in Practice*, Am. Fam. Physician, July 1, 2018, https://www.aafp.org/afp/2018/0701/p40.

72. *Id.*

73. See Leloudis, *supra* note 67, listing parties that can consent to care for minors in various contexts.

74. G.S. 90-21.4(a).

Health Professionals Permitted to Accept Minor Consent

Since its enactment in 1971, North Carolina's minor's consent law has always said that a minor may give effective consent to a "physician" licensed to practice medicine in North Carolina.[75] However, since at least 1977, the minor's consent law has been widely understood to extend to other health professionals working under the direction or supervision of a physician, such as nurses and physician assistants.[76] In many health care settings, physicians are part of a care team that includes a variety of other health professionals who work under the physician's direction (e.g., carrying out orders) or supervision. In other contexts where no physician is involved in the provision of health services, the minor's consent law cannot be used. For example, a licensed clinical social worker who runs their own independent practice providing counseling services is not authorized to provide that care based solely on the consent of a minor patient. In these situations, the consent of the child's parent or another party authorized by law is required.[77]

Health Services Available Under the Minor's Consent Law

As noted earlier, North Carolina's law allows minors with decisional capacity to consent to medical health services for the prevention, diagnosis, and treatment of venereal and other reportable diseases; pregnancy; abuse of controlled substances or alcohol; and emotional disturbance.[78] The following section discusses types of care a victim will likely seek following a sexual assault and whether those types of care fall within the scope of services that can be provided with the consent of only the minor victim under G.S. 90-21.5(a).

Venereal and Reportable Diseases

The term *venereal disease* is not defined under North Carolina's health and public health laws but is widely understood to mean a disease transmitted through sexual contact.[79] A *reportable disease* is a disease that, under law, must be reported to state and local public health agencies when it is identified in a patient.[80] Most sexually transmitted infections, such as gonorrhea, chlamydia, and syphilis, are included in North Carolina's list of reportable diseases. The list also includes other diseases that might be of concern following a sexual assault, such as HIV infection; Hepatitis A, B, or C; and tetanus. A small cohort of diseases are not reportable under

75. *See* S.L. 1971-35, § 2.

76. Infants and Incompetents; Health Services; Physicians; Family Planning Services Rendered to Minors by Nurse Practitioners or Physicians Assistants, Op. N.C. Atty. Gen., 1977 WL 26204 (Off. of the N.C. Att'y Gen. Oct. 4, 1977).

77. See Leloudis, *supra* note 67, listing parties that can consent to care for minors in various contexts.

78. A minor's consent alone is not sufficient to authorize the minor's abortion or sterilization or the nonemergency admission of the minor to a twenty-four-hour facility for substance use or behavioral health services. G.S. 90-21.5(a). There is also an exception to the minor's consent law, set out at G.S. 90-21.5(a1), that requires written parental consent before administering a vaccine available only under an emergency use authorization (EUA) and that has not been approved by the U.S. Food and Drug Administration. This change to the minor's consent law was effective August 20, 2021, and applies only to vaccines available under an EUA (and not to any other product, such as personal protective equipment, that may be subject to an EUA). For more information on G.S. 90-21.5(a1), please see Leloudis, *supra* note 70.

79. *E.g.*, *venereal*, Merriam-Webster, https://www.merriam-webster.com/dictionary/venereal%20disease (last visited Aug. 10, 2026). "Venereal" is derived from the Latin "Venus," the Roman goddess of love, hence relating to sexual intercourse.

80. A full list of reportable diseases and conditions can be found at 10A N.C.A.C. 41A, § .0101.

North Carolina law but are generally considered to be venereal diseases because they are transmitted through sexual contact. This includes, for example, human papilloma virus (HPV) infection and trichomoniasis.

Prevention of a venereal or reportable disease includes, but is not limited to, post-exposure prophylaxis. If the sexual assault involved bodily harm that would merit a tetanus booster (such as the victim being bitten by the perpetrator), then preventive care could include a tetanus shot. Diagnosis includes testing and clinical diagnosis (when appropriate) for a venereal or reportable disease. Treatment could include, but is not limited to, provision of antibiotics, antivirals, or other nonpharmaceutical care for venereal and reportable diseases, whether acute or chronic.

Pregnancy

Prevention of pregnancy, in this context, could include provision of emergency contraception. North Carolina's minor's consent law specifically excludes abortion care, which is governed by a separate set of state laws.[81] Diagnosis of pregnancy would include pregnancy testing (through urine, blood, or ultrasound). Treatment of pregnancy extends to pre- and postnatal care.

Abuse of Controlled Substances or Alcohol

In the context of post-sexual-assault medical care, testing for the presence of controlled substances or alcohol in the patient may—or may not—fall within the scope of the minor's consent law. If a minor patient reports that they voluntarily consumed a controlled substance or alcohol near the time of the sexual assault, the patient may be able to independently consent to care related to potentially diagnosing the patient's own substance use disorder. Diagnoses of this type are usually clinical diagnoses that consider patient histories, physical or psychological examinations, and symptoms. While screening or testing may support a diagnosis of substance use disorder, a single positive drug screen or test is typically insufficient to make that diagnosis.[82] Therefore, a drug test or screening by itself, absent any other care related to making a clinical diagnosis of a substance use disorder, likely cannot be provided based solely on the minor's consent.

What if the minor who is seeking care reports that they might have been drugged by someone else prior to or during the sexual assault? Screening or testing for the presence of drugs in the body of the minor patient *might* be within the scope of the minor's consent law if, for example, the purpose of the screening or testing is to determine whether the minor patient needs specific treatment because of the presence of the controlled substances or alcohol. More often, though, screening or testing is sought for the purpose of collecting evidence about whether the perpetrator caused or attempted to cause impairment of the victim. This type of conduct—for example, spiking someone's drink—is unlawful and may constitute crimes that are separate from

81. G.S. Chapter 90, Article 1A, Part 2 governs the process by which a minor may seek a judicial waiver of the requirement to obtain consent from a parent or other adult for an abortion. G.S. Chapter 90, art. 11 governs the provision of abortion services to patients of any age.

82. *See* DSM-IV-TR Criteria for Substance Abuse, Am. Coll. of Occupational & Env't Med., https://www.publicsafetymedicine.org/leo/substance-use-disorders/appendix-a-dsm-iv-tr-and-dsm-5-diagnostic-criteria (last visited Aug. 10, 2026).

the sexual assault.[83] However, the purpose of North Carolina's minor's consent law is to facilitate access to certain types of medical health services *for the minor*. Therefore, drug screening or testing offered solely for the purpose of collecting evidence of criminal conduct would not fall within the scope of the minor's consent law.

Emotional Disturbance

The term "emotional disturbance" was added to North Carolina's minor's consent law in 1977, which reflected the frequent use of that term in other state and federal laws during the 1960s and 1970s, particularly in the context of education.[84] The term is rarely used today and the modern parallel in the health care context would be mental and behavioral health conditions, generally.[85] Thus, under North Carolina's minor's consent law, a minor with decisional capacity can consent to services such as screening or testing for mental and behavioral conditions (e.g., screening for post-traumatic stress disorder) as well as treatment for those conditions (e.g., medication for depression or anxiety). As highlighted above, health professionals should be mindful of the legal limitations restricting which providers can accept consent from a minor under G.S. 90-21.5(a). In some contexts, nonphysician mental health professionals cannot provide care based solely on consent from the minor patient because these professionals practice independently and with no connection to a physician.

Injuries and Other Health Concerns Not Covered by Minor's Consent

A minor who seeks medical care following a sexual assault may have other health needs that fall outside the scope of what can be accessed on their own consent. For example, the minor victim might have lacerations, bites, or other injuries that require medical attention ranging from simple wound care to surgery. Medical health services that fall outside the scope of G.S. 90-21.5(a) will require the consent of the child's parent or another party authorized by law to give consent.[86] In some urgent or emergency situations, a physician or health professional working under a physician's direction or supervision may be able to provide care without first obtaining consent from the minor, their parent, or any other party.[87] This exception applies only in a narrow set of circumstances, however, so health professionals should carefully review the law that describes the exception (G.S. 90-21.1) and consult with an attorney as appropriate.

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83. *See* G.S. 14-401.11 (distribution of certain food and beverages) and -401.16 (contaminated food or drink). The statutes do not explicitly criminalize serving alcohol to a minor, but alcohol might qualify as a "noxious or deleterious substance . . . which might be injurious to a person's health or might cause a person any physical discomfort." G.S. 14-401.11(a)(1).

84. S.L. 1977-582, § 2. For federal laws that historically used the term "emotional disturbance," see Mental Retardation Facilities and Community Mental Health Centers Construction Act, Pub. L. No. 88-164, https://www.govinfo.gov/content/pkg/STATUTE-77/pdf/STATUTE-77-Pg282.pdf (last visited Aug. 10, 2026); Individuals with Disabilities Education Act (IDEA), Pub. L. No. 94-142, https://www.govinfo.gov/content/pkg/STATUTE-89/pdf/STATUTE-89-Pg773.pdf (last visited Aug. 10, 2026).

85. See, e.g., the definition of *emotional disturbance* under the IDEA regulations at 34 C.F.R. § 300.8(c)(4). *See also* Deborah Blythe Doroshow, Emotionally Disturbed: A History of Caring for America's Troubled Children (2019).

86. See Leloudis, *supra* note 67, listing parties that can consent to care for minors in various contexts.

87. G.S. 90-21.1.

Conclusion

The legal landscape governing consent for services following a sexual assault is complex, particularly when the victim is a minor. Although existing constitutional principles, statutory provisions, and related case law strongly suggest that a parent is the appropriate party to consent to a minor's forensic medical examination, North Carolina law does not directly speak to this issue. The absence of a statute specifically addressing who is authorized to consent to forensic medical examinations for minors who are victims of sexual assault leaves those victims, health professionals, victim advocates, law enforcement, and families to navigate difficult situations without clear legal guidance. These challenges are particularly acute when a parent refuses consent, is unavailable, or is implicated in the alleged assault, and when the limited window for collecting forensic evidence may close before legal questions can be resolved. By contrast, the state's minor's consent law provides a clearer framework for determining when a minor with decisional capacity may independently consent to certain health services, including care related to sexually transmitted infections, pregnancy, substance use disorders, and emotional disturbance.