

FREQUENTLY ASKED QUESTIONS ABOUT STOP FORMULA GRANTS

CERTIFICATION QUESTIONS

A. Judicial Notification

- 1. Does the Judicial Notification certification apply to local courts not under the control of the state courts?**

The state certification does not need to cover local courts not under the control of the state courts. However, if a local court seeks STOP Program funding, then it should provide such a certification to the state as a condition of receiving the subgrant.

- 2. Under the Judicial Notice certification, would a state be in compliance if the notice is provided by law enforcement through the incident report, rather than through the courts?**

No. This would not qualify as "judicial" notice.

B. Forensic Examinations

- 3. What is required by the state to comply with the forensic examination certification?**

Under 42 U.S.C. § 3796gg-4, a state is not entitled to funds under the STOP Program unless the state or another governmental entity "incurs the full out-of-pocket cost of forensic medical exams . . . for victims of sexual assault" and "coordinates with health care providers in the region to notify victims of sexual assault of the availability of rape exams at no costs to the victims." In addition, a state must comply with this requirement without regard to whether the victim cooperates in the criminal justice system or cooperates with law enforcement.

- 4. What is a "forensic medical exam?"**

The term "forensic medical exam" means 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.

The examination should include at a minimum:

- (A) examination of physical trauma;
- (B) determination of penetration or force;
- (C) patient interview; and
- (D) collection and evaluation of evidence.

The inclusion of additional procedures (e.g., testing for sexually transmitted diseases) to obtain evidence or provide treatment may be determined by the state in accordance with its current laws, policies, and practices.

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5. What does a state have to do to "incur the full out-of-pocket cost" of forensic medical exams?

A state shall be deemed to incur the full out-of-pocket cost of forensic medical exams for victims of sexual assault if any government entity:

- (A) provides such exams to victims free of charge to victims; or
- (B) arranges for victims to obtain such exams free of charge to the victims.

6. What is the definition of "full out-of-pocket costs?"

"Full out-of-pocket costs" means any expense that may be charged to a victim in connection with a forensic medical examination for the purpose of gathering evidence of a sexual assault (e.g., the full cost of the examination, an insurance deductible, or a fee established by the facility conducting the examination). For individuals covered by insurance, "full out-of-pocket costs" means any costs that the insurer does not pay. However, as described below and above, if the state wishes to use STOP funds to pay for the exams, it may not require victims to seek reimbursement from their private health insurance.

7. Can STOP funds be used to pay for a health care provider's time conducting forensic examinations?

Yes. Starting with FY 2007, STOP funds may be used for health care providers' time conducting forensic examinations, if two requirements are met:

- (1) the examinations are performed by specially trained examiners for victims of sexual assault (such as Sexual Assault Nurse Examiners (SANEs) or Sexual Assault Forensic Examiners (SAFEs); and
- (2) the jurisdiction does not require victims of sexual assault to seek reimbursement from their insurance carriers.

8. Can STOP Program funds pay for other aspects of SANE/SAFE programs even if the two above requirements are not met?

Yes. STOP Program funds may support the following activities related to SANE/SAFE programs even if the requirements for paying personnel costs are not met:

- training for SANE/SAFE personnel
- expert testimony of SANE/SAFE personnel
- forensic evidence collection kits ("rape kits")
- equipment, such as colposcopes, swab dryers, and lights
- outreach efforts to inform victims about available services
- victim advocate personnel to accompany victims through the forensic examination process
- on-going counseling services for victims
- on-call time of the SANE/SAFE personnel

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This list of SANE/SAFE activities that may be funded is not comprehensive and other similar activities may be funded. Please contact the state's grant program specialist with questions.

9. What if the hospital charges a fee for the use of the examination room?

If the hospital or other medical facility charges a fee for the use of the examination room, it is considered part of the exam and must be paid by the state or other governmental entity.

10. Can the state require victims to submit the claims for the cost of the exam to their personal health insurance providers?

Yes, if they are not using STOP Program funds to pay for the cost of the forensic exam. Under the definition of "full out-of-pocket costs," states can require that victims submit claims to their personal insurers. However, any expenses not covered by the insurer must be covered by the state or other governmental entity and cannot be billed to the victim. This includes any deductibles or denial of claims by the insurer. We urge states to keep in mind that, in some cases, insurance billing can present a hardship for victims. For example, a victim of spousal rape may not want her husband to find out that she got a forensic exam. If the victim is forced to submit the claim to her insurance company and she is on her husband's insurance, he may receive a statement from the insurance indicating that she got the exam. For this reason, OVW strongly encourages states to not require victims to file a claim with their insurers.

11. Are states permitted to require victims to cooperate with law enforcement as a condition for receiving a free exam?

No. Effective January 5, 2009, a state will not be in compliance with this provision and will be ineligible for STOP Program funds if the victim is required to cooperate with law enforcement or participate in the criminal justice system in order to receive an exam, payment for the exam, or both. Some victims are unable or unready to decide whether they want to cooperate with law enforcement in the immediate aftermath of the assault. Because evidence is lost as time progresses, such victims should be encouraged to have the evidence collected immediately and decide about reporting the crime at a later date. If local jurisdictions have policies or practices that require victim cooperation or participation in order to receive an exam or pay for the exam, the state is responsible for ensuring that all victims are able to receive free exams, regardless whether they cooperate with law enforcement or participate in the criminal justice system.

12. Can a state set a limit on the cost of the exam?

Yes, the state may set a rate for the cost of an exam. However, states should be cautious that they do not set the rate so low that no facilities are willing to provide exams.

13. Can a state use its Crime Victims Compensation Fund to pay for the forensic exams?

Yes, if state law designates the victim compensation program as the primary paying source for the exams. In many states, the compensation program is the primary payer under state law. For federal guidelines that apply to the Victims of Crime Act Victim Compensation Grant Program,

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go to http://www.ovc.gov/voca/pdf/voca_guidelines2001.pdf . If the state has further questions about the use of crime victim compensation funding for forensic exam payment, please contact the Office for Victims of Crime at (202) 307-5983.

14. Under the forensic exam certification, is the state required to provide exams for victims of child sexual abuse?

The certification applies only to adult and youth victims of sexual assault.

C. Fees and Costs

15. What grant programs are affected by the “fees and costs” certification?

This requirement applies to grantees under the STOP (Services*Training*Officers*Prosecutors) Violence Against Women Formula Grants (STOP) and Grants to Encourage Arrest Policies and Enforcement of Protection Orders (Arrest) Programs.

16. Who is affected by the “fees and costs” certification?

States, Indian tribal governments, units of local government, and state and local courts that apply for funding under the STOP or Arrest Programs are affected.

17. What is required to comply with the “fees and costs” certification?

Applicants for these programs must certify that:

[Their] laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence, dating violence, sexual assault, or stalking offense, or in connection with the filing, issuance, registration, modification, enforcement, dismissal, withdrawal or service of a protection order, or a petition for a protection order, to protect a victim of domestic violence, dating violence, sexual assault, or stalking, that the victim bear the costs associated with the filing of criminal charges against the offender, or the costs associated with the filing, issuance, registration, modification, enforcement, dismissal, withdrawal or service of a warrant, protection order, petition for a protection order, or witness subpoena, whether issued inside or outside the state, tribal, or local jurisdiction.

This certification shall be treated as a material representation of fact upon which the Department of Justice will rely when it determines whether to award the grant.

18. Do applicants need to change their statutes to come into compliance with the “fees and costs” certification?

If the laws of the state, tribe, or unit of local government conflict with the “fees and costs” provision, then the applicant will not be able to make the necessary certification, even if the jurisdiction has a policy of never charging fees.

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19. What if an applicant's statute is silent on the issue of fees?

If the statute is silent on the issue of fees, then the applicant may not need to pass a law because the policy does not need to be expressed in a law. However, the applicant will need to ensure that its policies and practices do not require victims to bear any of the relevant costs. We encourage applicants to pass a law or adopt a written policy to ensure that victims are not required to bear these costs.

20. As a policy matter, why is it important to comply with this requirement?

This provision is designed to ensure that jurisdictions are not forcing victims to bear costs related to criminal and civil domestic violence, dating violence, sexual assault, and stalking cases. The intent of the statutory language is to ensure that all victims can access legal relief in the civil and criminal justice systems, regardless of their financial circumstances.

21. Can grant funds be used to cover these fees and costs?

No, grantees cannot use grant funds to cover these fees and costs. Such use of grant funds would not comply with the certification because grantees are not entitled to funds unless they first certify that they have met (or will meet in certain cases as described in the answer regarding timing of compliance above) the filing fee requirement. This certification is a prerequisite for receiving grant funds. Program funds may not be used to pay these fees and costs, as Congress instructed grantees to certify that victims are not bearing these costs prior to receiving grant funds.

22. Can the respondent or defendant be charged fees in connection with protection orders or criminal cases?

There is nothing in the STOP or Arrest Program statutes to prevent jurisdictions from charging respondents or defendants. In fact, this may be a good way for jurisdictions to cover these costs.

23. What if the state law provides that persons below a certain income can get a fee waiver?

Providing fee waivers only for victims below a certain income is not sufficient. The statutory requirement applies to all victims, regardless of income.

24. Can victims be charged these fees if they are later reimbursed?

No. Charging victims up front and providing reimbursement also is not sufficient to meet the statutory requirement. Even if victims are fully reimbursed, this would require victims to "bear the cost" during the time from when they pay the fees until they receive the reimbursement, which is not permitted by the statute.

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25. What if the respondent, defendant, or subject of a warrant or witness subpoena lives out of state? Who should pay the costs of service in such cases?

The statute specifies that the requirement applies whether the warrant, protection order, petition for protection order, or witness subpoena is “issued inside or outside the state, tribal, or local jurisdiction.” This makes clear that victims cannot be charged in such cases. However, the statute does not specify which jurisdiction is required to cover the fees in such a case.

26. What types of protection orders are covered by the requirement?

The requirement specifically applies to an order “to protect a victim of domestic violence, dating violence, sexual assault, or stalking.” This includes any civil order of any type or duration so long as it was issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person. This also includes orders issued by criminal courts, and pendente lite orders in other proceedings, as described in 18 U.S.C. § 2266.

27. Can fees be charged for general protection orders such as “antiharassment” or “repeat violence” orders?

If the person applying for the order is a victim of domestic violence, dating violence, sexual assault, or stalking and is applying to get an order because of that crime, then the order would constitute an order “to protect a victim of domestic violence, dating violence, sexual assault, or stalking.” Jurisdictions may charge for general protection orders when the applicant is not a victim of these crimes.

28. What if a victim of domestic violence, dating violence, sexual assault, or stalking returns to court to request a modification of a protection order?

“Modification” of orders is expressly covered by the certification, so the victim could not be charged for this.

29. If the court denies a petition for an order, can the petitioner then be charged fees?

Possibly, depending on the specific circumstances of the case. It is possible that a court may deny a protection order even though the petitioner is a victim of domestic violence, dating violence, sexual assault, or stalking. For example, if the state law requires physical abuse to have occurred within a certain time period, a victim could be denied an order because there was not a recent enough incident of physical abuse. The petitioner may be charged fees if the court makes a finding that the petitioner is not a victim of domestic violence, dating violence, sexual assault, or stalking and denies the order based on that finding.

30. Can fees still be charged for divorce cases filed by victims of domestic violence, dating violence, sexual assault or stalking?

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The provision does not limit the ability of a jurisdiction to charge fees for divorce cases. However, if a victim of domestic violence, sexual assault or stalking files for a protection order within the divorce case, the victim cannot be charged fees associated with the protection order.

D. Polygraphing

31. Does the polygraph testing prohibition mean that victim polygraphs can never be used in a sexual assault investigation?

The polygraph testing prohibition at 42 U.S.C. 3796gg-8 requires states to certify that their laws, policies, or practices “will ensure that no law enforcement officer, prosecuting officer, or other governmental official shall ask or require an adult, youth, or child victim of an alleged sex offense...to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation for such an offense.”

This means that if the polygraph is not required and not a condition for the investigation, an official may request or offer an opportunity to take a polygraph examination. Jurisdictions should keep in mind however, that such “requests” may be inherently coercive to victims. Also, such requests should only be made in extreme circumstances and with justification, not as a routine matter. For example, the Attorney General Guidelines for Victim and Witness Assistance provide that “Department personnel are strongly discouraged from asking sexual assault victims to take polygraph examinations. The investigating agent may ask a sexual assault victim to take a polygraph examination only in extraordinary circumstances and only with the concurrence of a Special Agent in Charge or the Supervisory Assistant United States Attorney. All reasonable alternative investigative methods should be exhausted before requesting or administering a sexual assault victim polygraph examination.” Jurisdictions that do not prohibit all polygraph examinations of victims should consider implementing similar practices to ensure polygraph examinations are not misused.

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MISCELLANEOUS

1. Can universities be STOP subgrantees?

Yes, a university may be a STOP subgrantee if it meets STOP eligibility requirements and program purposes.

2. Why is there a greater emphasis in the STOP Program on collaboration with nonprofit, nongovernmental victim services programs than with law enforcement and prosecution?

One of the fundamental purposes of VAWA is to give an equal voice to victim advocates in establishing the priorities for funding within a state. Not all victims of violence against women seek help from the criminal justice system; many instead turn to shelters, rape crisis centers, and other programs for assistance.

3. Is it possible to change the project period or end date of the grant?

Yes. The state should contact its grant program specialist soon as possible so he/she can explain how to submit a Grant Adjustment Notice (GAN) for this purpose. The state will need to provide a justification for the change, including the amount of funds remaining in the grant, the reasons why the funds have not been (or will not be) expended by the current end date, and how the state plans to use the funds in the additional time period.

4. Is it possible change the project start date of the grant?

Yes, but only prior to the award being issued. States must contact their grant program specialist to make the request.