



MEDICINE AND THE LAW

Free provision of PEP and medical advice for sexual offence victims: What should doctors do?

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The Criminal Law (Sexual Offences and Related Matters) Amendment Act¹ (the Act) provides for the provision of post-exposure prophylaxis (PEP) and free medical advice at designated public health establishments for sexual offence victims who have been exposed to the risk of HIV infection.² 'Sexual offence' in this context means 'a sexual offence in which the victim may have been exposed to the body fluids of the alleged offender'.³

For persons exposed to the risk of HIV infection as a result of a sexual offence to qualify for free medical advice and PEP, they must within 72 hours after the alleged offence: (i) lay a charge against the alleged perpetrator with the South African Police Service (SAPS); or (ii) report the alleged sexual offence in the prescribed manner to a designated health establishment.⁴ Victims need only report to one or the other, but if they wish to lay a criminal charge, this must be reported to the SAPS.

The Act seems to envisage that a charge relating to a sexual offence may be laid on behalf of the victim by an interested person,⁵ viz. 'any person who has a material interest in the well-being of a victim, including a spouse, same sex or heterosexual permanent life partner, parent, guardian etc'.³

Sexual offence victims, or interested persons acting on their behalf, who report the alleged offence in the prescribed manner, must be informed by the relevant SAPS officer, medical practitioner or nurse of: (i) the importance of obtaining PEP for HIV infection within 72 hours after the alleged sexual offence; (ii) the need to obtain medical advice and assistance regarding the possibility of other sexually transmissible infections; and (iii) free services available at designated health

establishments.⁶ The victim or interested person should also be handed a notice containing the prescribed information regarding the compulsory HIV testing of alleged sexual offenders, and have its contents explained.⁷

To assist sexual offence victims to identify where they can obtain free medical advice and PEP, the Act provides that they should be supplied with a 'prescribed list' containing details of accessible public health establishments.⁸ The list of designated public health institutions that can provide PEP and carry out compulsory HIV testing must be published in the *Government Gazette* and distributed to relevant role-players.⁹

Provision of free medical advice and PEP: duties of doctors

Doctors working at designated health establishments should provide victims with the necessary free medical advice and PEP treatment as well as the notice containing the prescribed information regarding compulsory HIV testing of the alleged offender, and explain its contents.⁸

Doctors in private practice or working for non-designated health establishments should: (i) have a list (which is available from magistrates' courts, police stations, prisons and departments of health) of designated health establishments that provide free medical advice and PEP to sexual offence victims; and (ii) refer victims who cannot afford to pay for their services to such establishments. Doctors in non-designated health establishments should also keep copies of the notice regarding the compulsory HIV testing of alleged sexual offenders. Such doctors should always ensure that victims who are referred to designated health establishments for medical advice and PEP are likely to report there within 72 hours after the alleged sexual offence. This will enable victims to receive effective treatment, and they (or an interested person on their behalf) will be able to apply to a magistrate for compulsory HIV testing of the alleged offender.⁴

Doctors should provide sexual offence victims who are able to afford the services of non-designated establishments with the necessary medical advice and PEP, where indicated. Where the 72-hour limit is due to expire, doctors at non-designated establishments should treat the situation as a medical emergency¹⁰ and provide victims with the necessary PEP if indicated. Victims should also be given copies of the notice about compulsory HIV testing of alleged sexual

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offenders, and its contents should be explained. Victims should be referred to the SAPS within 72 hours should they wish to apply to a magistrate for an order compelling the alleged offender to be tested for HIV.⁴ If 72 hours have expired by the time that treatment is completed, and before the victim or an interested person can report the alleged offence to the SAPS, an investigating officer may still apply to a magistrate for compulsory HIV testing of the alleged sexual offender after the victim has laid a charge.¹¹

Whether doctors are employed at designated health establishments or not, the Act provides that if they have knowledge that a sexual offence has been committed against a child (a person under 18 years of age),¹² they must report this immediately to the police.¹³ Additionally, if they have knowledge, a reasonable belief or suspicion that a sexual offence has been committed against a mentally incompetent person, they must report this immediately to the police.¹⁴

1. Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007.
2. Section 28(1)(a) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007.
3. Section 27 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007.
4. Section 28(2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007.
5. Section 28(3) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007.
6. Section 28(3)(a) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007.
7. Section 28(3)(b) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007.
8. Section 28(1)(a)(iii) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007.
9. Section 29 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007.
10. McQuoid-Mason D, Dhai A, Moodley J. Rape survivors and the right to emergency medical treatment to prevent HIV infection. *S Afr Med J* 2003; 93: 41-44.
11. Section 32(2)(b) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007.
12. Section 1(1) of the Children's Act 38 of 2005.
13. Section 54(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007.
14. Section 54(2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007.