

SANE Programs and Evidence Storage

The integrity of sexual assault evidence collection and storage is a key issue in clinical forensic practice—and is a topic upon which the current edition of the *National Protocol for Sexual Assault Medical Forensic Examinations: Adults/Adolescent*¹ offers guidance. The issue encompasses two components: 1) the medical forensic documentation associated with the patient’s history and physical examination (i.e., medical forensic examination record, photographic records)² and 2) the sexual assault evidence collection kit³.

The SANE program manager should ensure that mechanisms are in place to maintain the integrity of sexual assault evidence collection and storage, and to establish a solid chain of custody of the potential evidence, which, if needed in the future, will be irrefutable. Policies must be developed thoughtfully and may best involve consultation with team members, such as facility legal representatives, health information services specialists, information technology departments, medical records personnel, and other multidisciplinary team members.

Medical Forensic Records

The first area of concern is the medical forensic record. Healthcare providers are *in the business* of securely managing medical records. Hospitals have established policies and regulations to protect how records are collected, retained, and accessed. Healthcare facilities must meet set standards for these areas. For more information on medical record collection, retention, and access laws— and to search federal statutes and state-specific laws related to medical records—access *Health Information & the Law* at <http://www.healthinfo.org/topics/60>.

Guidance provided to hospitals on the issue of health information retention may be obtained from various sources such as federal and state statutes, and accreditation requirements and/or recommendations. Some commonly recommended record storage times for hospitals⁴ are in the chart below:

¹ U.S. Department of Justice (DOJ), Office on Violence Against Women. (2013, April). *A National Protocol for Sexual Assault Medical Forensic Examinations Adult/Adolescent* (2nd ed.). Washington, DC: DOJ. For information on evidence integrity as addressed in the *National Protocol*, see: http://c.ymcdn.com/sites/www.safeta.org/resource/resmgr/Protocol_documents/Evidence_Integrity.pdf

² Ibid at 75. Retrieved on January 15, 2016, from <https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf>

³ A Sexual Assault Evidence Collection Kit is commonly referred to a “rape kit” “kit”, or “physical evidence recovery kit” (aka “perk”) and refers to the materials which are used by healthcare personnel to collect and package biologic materials obtained from the patient’s body during the medical forensic examination. For the purposes of this document it will be referred to as “kit”.

⁴ American Health Information Management Association. (2011). *Retention and destruction of health information*. Retrieved on January 15, 2016, from: http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_049252.hcsp?dDocName=bok1_049252

Federal Requirement	State Requirement	Accreditation Requirement	AHIMA ⁵ Recommendation
Hospitals: 5 years. Conditions of participation 42 CFR §482.24(b)(1)	Varies. For an overview of the statutes and regulations for each state, see https://www.healthit.gov/sites/default/files/appa7-1.pdf (Note: Per AHIMA, “Organizations and providers should compare state retention requirements and statute of limitations with legal counsel when developing a record retention schedule.”)	Joint Commission RC.01.05.01: The hospital retains its medical records. The retention time of the original or legally reproduced medical record is determined by its use and hospital policy, in accordance with law and regulation	Patient health and medical records <u>(Adults)</u> : 10 years after the most recent encounter <u>Minors</u> : Age of majority plus statute of limitations

It is critical that hospital-based SANE programs be aware of their state laws and facility policies regarding medical record storage and retention requirements, as conflicts may exist between these time frames and the potential needs of the criminal justice system. Records should be maintained for as long as a possibility exists that a case could either be prosecuted or appealed after a conviction. In many jurisdictions, it may be necessary to maintain the records for many years beyond the length of time a typical medical record would be stored. Community-based SANE programs are strongly encouraged to assure that they also comply with these storage requirements. In cases involving a medical forensic examination, failure to address the need for extended limits on record retention may result in a premature destruction of the record. In turn, a premature record destruction may interfere with—or preclude—future legal outcomes and can adversely affect kit processing, CODIS hits, and the justice system appeals process.

The U.S. Department of Justice has mobilized efforts to fund two action research projects⁶ to reduce the number of untested sexual assault evidence kits. Both projects faced one major challenge: difficulty tracking the medical records so the information could be used for kit testing and eventual prosecution of cases.

It is recommended that hospital-based SANE programs work in concert with their medical record or health information department and the hospital legal counsel to devise specific medical record retention and storage policies for medical forensic records. Similarly, community-based SANE programs are strongly encouraged to work with the facility’s legal representatives to devise retention and storage policies for the medical forensic records. Records should include documentation of the entire patient encounter, all photography, and any identified subsequent follow-up visits associated with the initial episode of care. Policies should address

⁵ American Health Information Management Association (AHIMA)

⁶ In an effort to understand kit backlogs, in 2011, NIJ awarded funding for action research projects in Houston, Texas, and Detroit, Michigan. National Institute of Justice (n.d.). *Action research: Two Cities Use a Multidisciplinary Approach*. Retrieved on January 15, 2016, from <http://www.nij.gov/unsubmitted-kits/Pages/default.aspx>.

storage, retention, access, and destruction procedures and ensure that they meet or exceed criminal justice and health information standards for retention of records.

Sexual Assault Evidence Kit Storage

The second area of concern with respect to evidence integrity is the evidence collection kit. The packaging and storage of biologic evidence can be of paramount importance in the investigative process. Biologic samples obtained during the medical forensic examination have specialized handling and secure storage needs to ensure optimum laboratory processing. As a rule, sexual assault examination facilities are unprepared to meet these specialized environmental and security storage needs.

In 2013, the US Department of Justice funded a project to the National Institute of Standards and Technology's Technical Working Group on Biologic Evidence Preservation. The goal was to research and produce a publication recommending best practices for evidence handlers. The resulting *Biological Evidence Preservation Handbook: Best Practices for Evidence Handlers*⁷ ("the Handbook") outlines instructions for the proper storage environments, handling of potential hazardous biologic materials, ventilation requirements, packaging requirements, and signage in rooms where evidentiary materials are kept prior to processing. The text states that "biologic evidence . . . should be retained in an appropriate storage facility until needed for court or for forensic testing."⁸

The *Handbook's* recommendations include⁹:

Recommendation III-1	In tandem with state or local legislatures, managers in law enforcement and relevant stakeholders should advocate for additional resources and funding to ensure the integrity of biological evidence through prioritizing the packaging, storage, maintenance, and security of the evidence in their jurisdictions.
Recommendation III-2	To optimize a sterile environment without commingling items of evidence, property and evidence management should establish a policy or procedure requiring documentation of who is responsible for cleaning the drying area, how the area is to be cleaned and decontaminated, how the decontamination process is documented, and how long the documentations is to be retained.
Recommendation III-3	Each law enforcement agency should develop a protocol for standardizing evidence packaging materials and customizing shelving to allow for more efficient retrieval of evidence stored in property rooms.
Recommendation III-4	For the safety of employees, agencies should always attempt to segregate types of biohazardous evidence, such as liquid evidence, tissue samples, and extracted DNA, in one centralized location for easy identification and safe storage.

⁷ National Institute of Standards and Technology. (2013). [The Biological Evidence Preservation Handbook: Best Practices for Evidence Handlers](#). Washington, DC: National Institute of Justice.

⁸ *Id.* at iv.

⁹ *Id.* at 9, 11-13 & 21.

Hospital-based or community-based SANE programs typically are not equipped to meet these standards for long-term storage for sexual assault evidence kits. A training bulletin from End Violence Against Women International (EVAWI Intl) on this issue advises that “*any evidence be stored by law enforcement.*”¹⁰ However, it is recognized that in many cases there may be a need for temporary storage of kits at the SANE program site as they await transportation to long term storage. (Temporary storage is defined as storing evidence for 72 hours or less¹¹.) In cases where the kits are unable to be released directly to law enforcement - or in a timely manner - they should be stored to assure that appropriate chain of custody, security and environmental conditions exist. These standards should be established in consultation with the local forensic laboratory.

Based on the best practice recommendations from the National Institute of Standards and Technology’s Scientific Working Group, **it is recommended** that all evidence collection kits that contain biologic samples be stored by an appropriate law enforcement agency or laboratory that meets the standards indicated by the *Biological Evidence Preservation Handbook*.¹² The SANE program or facility should not serve as a long term storage repository. Instead, the SANE program should focus its efforts on establishing policies to ensure that the collected evidence is promptly released to either a law enforcement agency or a laboratory within a defined reasonable time frame, according to the jurisdictional protocol that has been developed in collaboration with the multidisciplinary members of the sexual assault response team (SART).

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¹⁰ Lonsway, K. A., & Archambault, K. (2015, January). *Training bulletin: Alternative Reporting Methods: Evidence Storage and Retention*. Addy, WA: End Violence Against Women International; 1. Retrieved on January 15, 2016, from <http://www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=596>

¹¹ *The Biological Evidence Preservation Handbook: Best Practices for Evidence Handlers*, p. 17.

¹² *Supra* note 10.