



# *VAWA 2005 and Sexual Assault Medical Forensic Exams*

## *Kit Storage Issues*

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SEXUAL ASSAULT MEDICAL FORENSIC EXAMS AND VAWA 2005 BRIEF 3  
MAY 2014

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This project was supported by Award No. 2010-WG-GX-0011, awarded by the National Institute of Justice, Office of Justice Programs, US Department of Justice. The authors thank (1) Sally Laskey, Joyce Lukima, Barbara Sheaffer, Donna Greco, and others of the Pennsylvania Coalition Against Rape (National Sexual Violence Resource Center) for being a partners on this project and assisting in its implementation; (2) the state-level state STOP administrators, victim compensation fund administrators, and sexual assault coalitions' members, as well as the many local victim service providers, sexual assault forensic nurse examiners (and other medical providers), crime lab and other justice agency personnel, law enforcement, and prosecutors who participated in surveys and qualitative data collection interviews; (3) local sexual assault service providers who helped us arrange focus groups with sexual assault survivors and recruited participants in such groups; (4) the many sexual assault survivors who bravely shared their experiences with us; (5) Dan Eddy, National Association of Crime Victim Compensation Boards, and Sandra Warren, Indiana Criminal Justice Institute, for providing data and review of survey drafts; (6) Sheila Allen and Donna Phillips for reviewing survey drafts as part of the Association of VAWA administrators; (7) students in the George Mason University Department of Criminology, Law and Society's 2011–12 Honors Seminar; and (8) the National Institute of Justice and Shelli Rossman of the Urban Institute for their careful review of this report.

The opinions, findings, and conclusions, and recommendations expressed in this document are those of the authors and do not necessarily reflect those of the Department of Justice, or of the Urban Institute, its trustees, or its funders.

The Violence Against Women Act (VAWA) of 1994 required that, as a condition of program eligibility for the federal STOP (Services\*Training\*Officers\*Prosecutors) grant program, the state or another entity—not the victim—must bear the full costs for sexual assault medical forensic exams. These exams serve a dual function:

1. to provide victims with necessary medical care to treat minor injuries, test for sexual transmitted infections, test for possible pregnancy, and make referrals for additional medical services that may be necessary; and
2. to collect forensic evidence to build a criminal case by documenting sexual contact and the identity of the offender through biological samples, and to document injuries suggestive of force or the use of coercion through drugging. Victims may also be linked to counseling and advocacy services at the time of the exam.

In many jurisdictions, states were providing free exams, but only to victims who reported the crime to law enforcement—as allowed under VAWA 1994. When an immediate decision of police reporting is required in order to get a free exam, victims who decided not to participate in the criminal justice system, or who are unsure about this decision, may forgo receiving the exam. The reauthorization of VAWA in 2005 specified that the state is required to ensure the exam is paid for, regardless of whether the victim reports to law enforcement or participates with the criminal justice system. The intent of providing victims with access to free exams regardless of police reporting was to increase victims' access to exams and referrals to supportive services, and to increase victim participation in the criminal justice system by collecting evidence when it's still available, while also providing victims with time to make the decision on whether to report the crime to the police.

States were given until January 5, 2009, to meet the federal requirement for free exams regardless of police reporting. In 2010, the National Institute of Justice funded the Urban Institute, George Mason University, and the National Sexual Violence Resource Center to study how this provision was being met by states, and the issues that arise in its implementation. The study included national online surveys of state victim compensation fund administrators, state STOP administrators, state-level sexual assault coalitions, and local sexual assault service providers. We also conducted case studies in six states and 19 local jurisdictions across these states to examine the state-level and local-level implementation and impact of these policies. The case studies included focus groups with victims, observational data collection methods (e.g., tours of examining facilities and crime labs), and interviews with medical, advocacy, law enforcement, and prosecution personnel. These interviewees have considerable experience and expertise in the issues, and the data provided represent their professional opinions and perceptions.

## **Basic Principles of Model Kit Storage Approaches for Nonreporting Victims**

A major concern about VAWA 2005 compliance centered on the issue of exam-kit storage. As more victims become eligible for free exams—because nonreporting and reporting victims must have access under federal law—the number of exams being conducted could increase. Because one purpose of providing forensic evidence collection services to nonreporting victims is to have that evidence available should the victim later choose to report, the kits of nonreporting victims must be retained and must meet for chain of custody and evidence storage standards as the kits of reporting victims. Communities needed to plan how to meet the challenge of tracking and storing more kits within finite evidence-storage facilities. States needed to take stock of how exam kits for victims who had not reported the crime to law enforcement would be stored, pending a possible conversion to a reporting status. They also needed to consider the length of time that such kits should be retained and what agency should take responsibility for them. An important practical consideration was what facilities were available to house them. Several approaches have been developed. For the purposes of this study, we examined three specific storage models: law enforcement, non-law enforcement, and anonymous (figure 1).

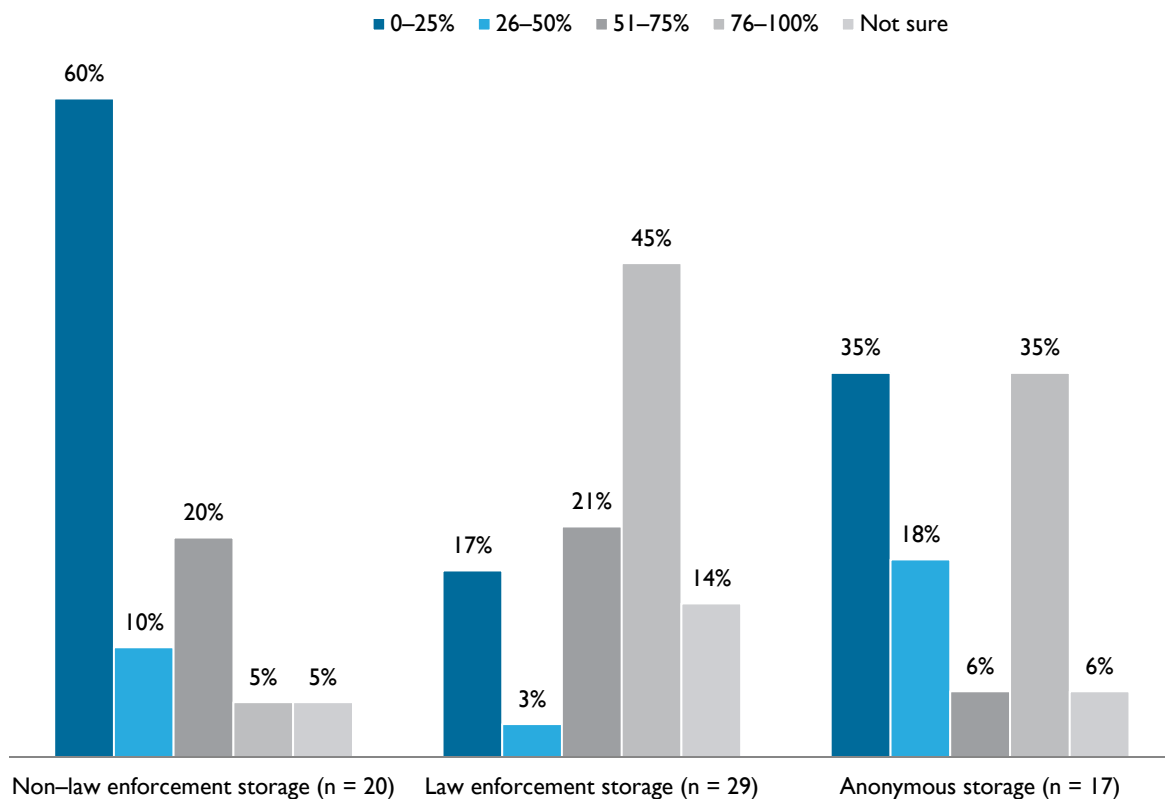
*Law enforcement storage:* Medical facilities perform the exam and transfer the evidence to a local, county, or state law enforcement agency. In this model, kits are stored by law enforcement—with or

without identifying information—but cases are not opened for investigation unless the victim files a report.

*Non-law enforcement storage:* Medical facilities perform the exam and securely store the evidence either at the medical facility or at an alternative location, such as a victim service provider. If the victim later chooses to report, the kit is provided to the law enforcement agency with jurisdiction over the case.

*Anonymous storage:*<sup>1</sup> Non-identifying information about the victim and the perpetrator is provided to law enforcement, along with the kit. Law enforcement stores the kit and may choose to open an investigation and send the kit to the crime lab for analysis even without a victim report, instead on an anonymously.

**Figure 1. Percentage of Jurisdictions Using Exam Kit Storage Models for Nonreporting Victims**



Note: N = 47 valid responses from state-level sexual assault coalitions.

## Kit Storage Practices: Storage Models Used

We asked state-level sexual assault coalitions to estimate the storage models being used across their states.

1. *Law enforcement storage:* Twenty-nine coalitions said that some portion of the jurisdictions in their states used a storage model where medical facilities perform the exam and transfer the evidence to a local, county, or state law enforcement agency. In the states where this model is used, its use seems to be widespread. Two-thirds of the coalitions in these states reported that this model is used in half or more of their jurisdictions.
2. *Non-law enforcement storage:* Twenty coalitions reported that some portion of their jurisdictions use a storage model where law enforcement has no involvement in storage, so that medical facilities perform the exam and securely store the evidence either at their facility or at a third-party location.

Reports from the coalitions indicate this method is not widespread in these states, with most coalitions reporting that less than 25 percent of the jurisdictions in their state use this model.

3. *Anonymous storage:* Seventeen coalitions reported that at least some jurisdictions in their state used an anonymous reporting model. This model seems to be widely used in some states, but less so in others, with 35 percent of the coalitions in these states reporting that under 25 percent of the jurisdictions use this model, and 35 percent reporting its use in more than 75 percent of the jurisdictions.

In three of the case-study sites, the kits for nonreported assaults were stored at the hospitals or health care providers that perform the exams. In all but one county in one state, kits for nonreported assaults were held by health care providers. These kits were stored with identifying information about the victim, so they were not stored anonymously. In another state where exam policies and practices were decided by each local county, three of the counties we visited chose to store kits for nonreported assaults at the hospital in which the exam was performed. The length of time the hospitals kept the kits varied by county.

### **Anonymous Law Enforcement Kit Storage**

In one state, all kits from nonreported assaults were held in the local police department with jurisdiction where the assault occurred. Kits in this state are tracked by number. Victims are given their kit number with which they can trace their kit for reporting the assault to law enforcement, if they choose to do so.

In another state, if law enforcement was identified as the place to store kits for nonreported cases, the kits were stored by an identification number, but sealed inside the kit was an envelope with the victim's name on it, should he or she choose to report.

Across the 19 case-study jurisdictions, only one locality offered the option of anonymous reporting. While several places stored anonymously labeled kits in law enforcement agencies, in most cases, these agencies merely stored the kit; they did not consider the receipt of an anonymous kit as a report of the assault. Rather, they were merely storing the kit for nonreported assaults.

### **Non-anonymous Law Enforcement Kit Storage**

In one location, kits from nonreported assaults were held in the local police department. In this location, once a week, an employee of the police department visits area hospitals to pick up kits from both reported and nonreported cases. All kits have the victims' names on them, even though a kit may be for a nonreported assault; here, the police know the names of nonreporting victims and have their kits. A member of the local victim service agency contends that this nonconfidential nature of storage turns the kit into a reported case. This process is not transparent to the victims and, in some cases, the police department will *submit* the kit for testing to add to the department's suspect profile database. This testing of the kit is again *without* the victim's knowledge or permission.

In one location, anonymous kits *were* processed with the permission of the victim (see Anonymous Reporting Procedures box). This practice may have an unintended consequence. If no physical evidence is found through the kit and the victim learns of this lack of evidence, it may have a detrimental effect on the victim's healing process. Thus, it might be helpful to discuss this possibility with a victim during the informed consent procedures before the exam. It would be important for advocates to be available to address the emotional ramifications of learning that the exam did not find physical evidence. If the kit does yield evidence, it may be best for personnel with expertise in forensic evidence to discuss the findings with the victim, as one piece of the evidence available in the case.

## **Anonymous Reporting Procedures**

One county we visited offers an anonymous reporting option to victims. Nurses performing the exams give victims three options related to reporting: (1) have a kit done and report to police, (2) have a kit done with your name on it and submit it to the victim service agency to hold until you are ready to report, or (3) have a kit done anonymously and submit it to the police for testing. Originally, they only gave the first two options to victims, but since the third anonymous reporting option became available, victims are more likely to choose the third option and last likely to choose the second. Victims who choose the third option sign a document giving permission for the kit (without identifying information on it) to be delivered the police and for police to submit the kit to the relevant crime lab for testing and analysis.

The sheriff's department in the county submits kits to the crime lab for all anonymously reported assaults throughout the county. The local victim service agency keeps the victims' identifying and contact information to connect with her/him after the results of the analysis come back. If there is a Combined DNA Index System hit or there are other kit findings and the victim wants to go forward with the case after learning the results of the analysis, the sheriff and prosecutor contact the town or city law enforcement agency with jurisdiction over the assault to do the rest of the investigation. Before this contact, the law enforcement agency with jurisdiction would have had no knowledge of the assault. This county is using anonymous reporting, and all local law enforcement agencies agreed to this model.

Finally, we asked state coalitions during surveys if there were any other storage practices beyond the three we asked about happening in their states. Examples of other kinds of storage practices include medical facilities performing the exam and then a courier transporting the exam to the department of health for secure storage, or medical facilities performing the exam and then submitting it to the state crime lab for storage for up to 120 days or until a report is made to law enforcement.

## **Kit Storage Practices: Length of Storage for Nonreported Cases**

Our case-study participants reported varying lengths for kit storage in nonreported cases. Some states had requirements for the length of time kits should be stored; in other areas, storage length was determined by individual jurisdictions or localities. For example, one state had a rule to hold kits for nonreported assaults for 30 days. One jurisdiction in this state followed the policy; another said that it kept kits indefinitely and had kept all kits for nonreported assaults to date.

In general, participants reported that they kept kits far longer than required. Some would hold the kit until the statute of limitations for the crime had expired and others would destroy kits when they ran out of space in order of age. In some places where it was indicated they would hold kits until space became an issue, hospitals or victim service agencies would call the nonreporting victims before destroying the kit to ensure it was appropriate to do so and that they had no intention of converting the case to a reported assault.

Among many people we spoke to during case studies, the concern was to hold the kits as long as possible in case victims changed their minds about reporting. One particular police officer said that she was uncomfortable destroying a kit because she does not know why someone did not report the crime: What if she/he was in residential treatment or in a domestic violence relationship that prevented her/him reporting? Thus, this officer preferred to keep kits through the statute of limitation for the assaults, so that victims could always decide to report later if they wanted.

## **What Should Be Done?**

Our findings lend themselves to implications for policy and practice in several ways:

- Continue to provide training and technical assistance around storage practices for nonreported kits, particularly opportunities for anonymous reporting by victims that includes their consent. Assistance in negotiating and implementing systems whereby victims can participate in anonymous reporting, if they so choose, may be especially useful.
- Rigorous evaluation of various storage practices and how they relate to victim satisfaction, case outcomes, and public safety is necessary.

## **Note**

1. This is a working definition for the purposes of this study; the term may be used differently by different organizations. Throughout this study, this definition was provided to coalition respondents as part of the survey question.

