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This training bulletin is the seventh in a series designed to explore alternative reporting methods. So far, we have provided an introduction to the essential concepts and explored some key components for implementation. In this installment, we discuss the issue of evidence storage and retention. We are frequently asked questions about this topic, so we begin by discussing how long evidence should be stored in connection with any alternative reporting procedures that are offered for sexual assault victims.

How Long Should Evidence be Stored?

Such questions typically arise when the victim has had a medical forensic examination, but evidence could also be taken into custody by law enforcement in association with any form of alternative reporting mechanism (without an exam being conducted). For example, a victim who is making an anonymous or non-investigative report may bring in an article of clothing or bedding, want photographs taken of injuries, or submit digital evidence (such as cell phone data, digital photographs, or social media posts). Community protocols should clarify whether evidence can be stored and retained in such a situation, just as it when victims have a medical forensic exam without personally reporting to law enforcement.

Community protocols will need to address issues such as the following:

- What evidence can be collected and stored?
- How long will evidence be stored?
- Will these policies vary for standard reports versus alternative forms of reports?

For questions such as these, the answers may vary by community and even by agency.

Evidence Stored by Law Enforcement

However, the question of *who should store such evidence* should be more straightforward. We recommend that *any such evidence be stored by law enforcement*, following standard procedures.

Even if a community offers third party reporting as an option for victims, the organization receiving third party reports will not generally have the capacity to store any type of evidence (unless it is a health care facility that can retain some forms of evidence for a limited period of time, before handing it over to law enforcement.)

Especially for victim advocacy agencies, it is clear that they should never assume responsibility for storing and retaining evidence. For one thing, they are not equipped to maintain the rigorous standards for evidence storage as well as proper chain of custody. More important, storing evidence would change their role from being an advocate for the victim to a



participant in the investigation. This would compromise the nature of the advocacy role and jeopardize the confidentiality of all communications between the victim and advocate, including written records.

To address this issue, community protocols should include procedures for law enforcement agencies to accept, store, and retain evidence, perhaps by labeling and tracking the evidence with a pseudonym or other anonymous tracking number.

Much of the guidance on VAWA forensic compliance will be directly relevant for guiding policies and practices in this area.

How Long Should Evidence be Retained?

Any community protocol for alternative reporting methods will need to address the question of how long evidence will be stored. While the specific length of time will vary across agencies, it would generally defeat the purpose if evidence is not held long enough to give victims time to make a decision to convert to full participation in the criminal justice process. ***We therefore recommend that agencies store evidence for as long as possible, up to the statute of limitations or even indefinitely.***

This is particularly true in jurisdictions that have extended or eliminated the statute of limitations for sexual assault, either as a matter of law or by using the practice of issuing a 'John Doe warrant' with a DNA profile rather than a name to identify the suspect.

Regardless of how long evidence is stored, however, this must be clearly explained both in the community protocol for alternative reporting methods as well as informational materials for victims. Otherwise, there could be concerns related to consistency, selectivity, and a lack of fairness with respect to how long evidence is stored and when it is destroyed.

For more information, please see the New Jersey Attorney General's Office [Directive](#) on retaining evidence in anonymous and/or non-investigative reports, which revised the standards for evidence retention in cases where the victim has not yet decided to report to law enforcement following the standard procedures.

Consent for Evidence Procedures

Other issues to be addressed in a community protocol pertain to the consent victims must provide for the collection, storage, and analysis of the evidence in their case.

For victims who participate in a medical forensic exam, existing protocols should ensure that they are first provided with a wide range of information and then asked to document their consent to various procedures. For those who go on to participate in the standard reporting process, they will also sign a form releasing their evidence to law enforcement.

For victims who elect an alternative reporting method, they will typically follow the standard procedure for consenting to the collection and storage of evidence, but not its analysis.

Consent to analyze the evidence will generally only be provided by victims if they convert from the alternative reporting option to the standard reporting process.

When Cases are Pursued Against the Victim's Wishes

If prosecution is pursued against the wishes of the victim, and a court issues a subpoena, the SAFE or other health care provider will be required to turn over the evidence as well as the records or other documentation from the medical forensic examination as ordered by the court. This possibility will need to be addressed with victims. It should also be addressed in community protocols and written information that is sent home with victims, to explain when this might happen and to document any good faith agreements that prosecution will not generally be pursued against the wishes of victims except in certain circumstances.

Can Evidence Be Returned to Victims?

Community protocols will also need to clarify what rights (if any) victims have for returning clothing or other evidence associated with various forms of reports (e.g., clothing, bedding). This information can then be incorporated into the informational materials created for victims.

In communities where evidence is stored anonymously by law enforcement, it may be difficult for victims to have anything returned to them, because some form of identification is typically required before evidence can be returned to its lawful owner. However, if the victim has met with law enforcement at some point during the alternative reporting procedure, it is possible that the officer can make the necessary arrangements to have certain items returned to the victim if requested. This would likely require the victim to show proper identification, with the understanding that the victim's identity will not be recorded as part of the report.

When evidence in connection with such a report is stored by a SAFE program or other health care facility, it may be easier to return some items to the victim if requested. However, this will likely pertain only to items such as clothing or bedding. Serious concerns would arise if victims were offered the option of requesting other types of evidence (e.g., biological samples collected during a medical forensic examination). Among other concerns, this might create an opportunity for suspects to intimidate victims into requesting to have evidence returned, to obstruct the investigation and potential prosecution. We therefore recommend that informational materials clarify that any biological evidence collected does not belong to the victim and that no process exists for victims to request access to this evidence or have it returned to them.

Evidence Destruction

Finally, the determination must be made whether a community protocol will require victim notification when the evidence associated with their report will be destroyed. This notification will likely be made some period of time before the actual destruction of evidence (e.g., 30-90 days before the scheduled destruction).

Training Bulletin

Alternative Reporting Methods: Evidence Storage and Retention

Other communities have developed protocols where victims are informed of the timelines for evidence storage upfront, so they are not notified at the time the evidence is destroyed. In either situation, it is critical that victims understand the timelines for evidence storage and the procedures for notification (if any).

For More Information

A number of tools are available in our Forensic Compliance Resources to assist with questions of evidence storage policies and procedures. For example, under the [Articles](#) tab is information about a publication in the *Journal of Forensic Nursing* discussing issues of evidence storage. Sample policies, protocols, and forms are also available under a variety of other tabs.

Up Next

Clearly, there are many complex and challenging issues to address regarding evidence storage and retention, in connection with alternative reporting procedures for sexual assault. In our next installment, we focus on the procedures that must be developed for victims who decide to convert from an alternative reporting option to a standard report.

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