

5. Timing Considerations for Collecting Evidence

Recommendations at a glance for health care providers and other individuals responding to sexual assault victims to optimize evidence collection:

- Recognize the importance of gathering information for the medical forensic history, examining patients, and documenting exam findings, separate from collecting evidence.
- Examine patients promptly to minimize loss of evidence and identify medical needs and concerns.
- Make decisions about whether to collect evidence and what to collect on a case-by-case basis, guided by knowledge that outside time limits for obtaining evidence vary due to factors such as the location of the evidence or type of sample collected.
- Examiners and law enforcement representatives should seek education and resources to aid them in making well-informed decisions about evidence collection.

Recognize the importance of gathering information for the medical forensic history, examining patients, and documenting exam findings, separate from collecting evidence. Examiners should obtain the medical forensic history as appropriate, examine patients, and document findings when patients are willing, whether or not evidence is gathered for the sexual assault evidence collection kit. The history and documentation of exam findings can help in determining if and where there may be evidence to collect and in addressing patients' medical needs. In addition, they can be invaluable in and of themselves to an investigation and prosecution if a report is made. It is also important to document patients' demeanor during the exam process using specific, concrete terms (e.g., crying, shaking) and their statements made related to the assault because if the case is reported, this information could be admitted as evidence at trial. When documenting patient statements, it is important to write down the exact wording of the statement.

Examine patients promptly to minimize the loss of evidence and identify medical needs and concerns. Evidence can be lost from the body and clothing through a number of mechanisms. For example, degradation of some seminal fluid components can occur within body orifices, semen can drain from the vagina or wash from the mouth, sperm can lose motility, bodily fluids can get washed away, and dried secretions and foreign materials can fall from the body and clothing.¹⁵² Prompt examination also helps to quickly identify patients' medical needs and concerns.

Due to the stability of DNA and sensitivity of tests, advancing DNA technologies also continue to extend time limits. These technologies are even enabling forensic scientists to analyze stored evidence from crimes that occurred years before.¹⁵³ Such breakthroughs demonstrate the importance of collecting all possible evidence.

Make decisions about timeliness issues for evidence collection on a case-by-case basis, guided by the knowledge that outside time limits for obtaining evidence vary due to factors such as the location of the evidence or type of sample collected. Examiners and law enforcement representatives, in particular, should be aware of the standard cutoff time for evidence collection in their jurisdictions, which is typically indicated in instructions in evidence collection kits. But it is important to remember that evidence collection beyond the cutoff point is conceivable and may be warranted in particular cases. In any case where the utility of evidence collection is in question, encourage dialogue between law enforcement representatives (if involved), examiners, and forensic scientists regarding potential benefits or limitations.

¹⁵² Paragraph drawn from the *California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims*, 2001, p. 29.

¹⁵³ When the evidence was initially collected after the assault, it was not of adequate quality to allow crime lab analysis using existing technologies. See . T.S. Corey, A.R. Wetherton, P.J. Foncek, and D. Katz, Investigation of Time Interval for Recovery of Semen and Spermatozoa from Female Internal Genitalia, from the Office of the Chief Medical Examiner, the Department of Pathology and Laboratory Medicine, University of Louisville School of Medicine, and the Kentucky State Police Forensic Science Laboratory. See also K. A. Mayntz-Press, L.M. Sims, A. Hall, and J. Ballantyne, "Y-STR Profiling in Extended Interval (≥ 3 days) Postcoital Cervicovaginal Samples", *Journal of Forensic Sciences*, V. 53, Issue 2, pp. 342–348, March, 2008.

Individuals responding to sexual assault victims should avoid basing decisions about whether to collect evidence on how they think patients' characteristics or circumstances will affect the investigation and prosecution. For example, the fact that an adolescent may have lied to her parents about where she was going the night of the assault should in no way influence the decision of the examiner and/or the law enforcement representative to collect evidence.

Examiners and law enforcement representatives should seek education and resources to aid them in making well-informed decisions about evidence collection. Examiners and law enforcement representatives require training and resources to allow them to make informed decisions about whether to collect evidence and what to collect in each case. They also need local policies and kit instructions that encourage them to make informed decisions in each case, rather than applying a limiting general standard to all.¹⁵⁴ First responders also need instructions on collecting a urine sample if there is any suspicion of alcohol- or drug-facilitated sexual assault and victims cannot wait to urinate until their arrival at the exam site.

¹⁵⁴ For many communities, moving away from the 72-hour cutoff time represents a major shift in policy. Training and policies should discourage decision making about evidence collection that is based on extraneous factors, such as reluctance of a criminal justice agency to pay for sexual assault evidence collection in general.