

Transporting Forensic Exam Kits

SART Listserv

July 2007

Background: A reporter has heard that law enforcement authorities in a particular city are not picking up rape kits from the hospitals in a timely fashion. She'd like to know if that problem is a "trend."

Florida

- Law enforcement is on standby during forensic medical exams and take possession of kits immediately to ensure chain of custody;
- At this point in time, the procedure is for reported cases only;
- Florida Law changed July 1, 2007, which allows victims to have forensic medical exams without reporting to law enforcement. We are currently working on guidelines for chain of custody;
- Hospitals cannot provide storage.

Indiana

- Indiana just passed a bill that became effective July 1, 2007 that mandates that all sexual assault kits collected will be maintained for a minimum of 12 months, regardless of pressing of charges or not. [Indiana Bill 1654 – **See resources**];
- There is a huge disparity in our counties on the availability of storage of the kits;
- We also are mandated to keep the patient/victim/survivor's name confidential until charges are pressed;
- We haven't found a fool-proof protocol yet.

Military

- The Military Criminal Investigative Organizations are mandated to keep the kits.

Massachusetts

- All **unreported** kits are tracked by numbers known only to survivors;
- All **reported** kits are tracked by the DA's office;
- Kits are picked up at hospitals by law enforcement from the town where the assault took place and transported to the state police crime lab where they are stored for 6 months unless the survivor applies for an extension.
- Protocol for the Transportation of Adult and Pediatric Sexual Assault Evidence Collection Kits from Hospitals and Children Advocacy Centers to the Crime Laboratories
http://www.mass.gov/Eeops/docs/programs/law%20enf/2006_transport_protocol.doc

West Virginia

- Law enforcement picks up the kits that are part of the investigation and delivers them to the crime lab;
- In hospitals with trained SANEs and SARTs in the community, the kits are picked up in a timely manner;
- Development of policies and protocols has improved the process tremendously.
- WV recently changed legislation to meet VAWA certifications for exams without law enforcement reports;
- The WV State Police crime lab is willing to store them but the prosecutors/law enforcement officers do not see it as their responsibility to transport the kits (since it is not officially evidence because there is no investigation).
- Our dilemma is how to get them to the crime lab without breaking the chain of custody in case the victim does not report to law enforcement.

Resources

IC 16-21-8-1.5

Appointment of a sexual assault response team

Sec. 1.5. If a sexual assault response team has not been established in a county, the prosecuting attorney shall appoint a sexual assault response team in that county, or the county shall join with one (1) or more other counties to create a regional team, to comply with duties assigned to sexual assault response teams under this chapter.

As added by P.L.41-2007, SEC.14.

IC 16-21-8-2

County or regional sexual response team; duties Sec. 2.

(a) Each county or regional sexual assault response team shall develop a plan that establishes the protocol for sexual assault victim response and treatment, including the:
(1) collection; (2) preservation; (3) secured storage; and (4) destruction; of samples.

(b) The plan under subsection (a) shall address the following regarding an alleged sexual assault victim who is at least eighteen (18) years of age and who either reports a sexual assault or elects not to report a sexual assault to law enforcement:

- (1) The method of maintaining the confidentiality of the alleged sexual assault victim regarding the chain of custody and secured storage of a sample.
- (2) The development of a victim notification form that notifies an alleged sexual assault victim of his or her rights under the law.
- (3) How a victim will receive the victim notification form.
- (4) Identification of law enforcement agencies that will be responsible to transport samples.
- (5) Agreements between medical providers and law enforcement agencies to pick up

and store samples.

(6) Maintaining samples in secured storage.

(7) Procedures to destroy a sample following applicable statute of limitations.

As added by P.L.2-1993, SEC.4. Amended by P.L.121-2006, SEC.24; P.L.41-2007, SEC.15.

IC 16-21-8-3

Forensic medical exams and additional forensic services; consent

Sec. 3. A physician or sexual assault nurse examiner who provides forensic medical exams and additional forensic services shall provide the forensic medical exams and additional forensic services to an alleged sex crime victim under this chapter with the consent of the alleged sex crime victim.

As added by P.L.2-1993, SEC.4. Amended by P.L.121-2006, SEC.25; P.L.41-2007, SEC.16.

IC 16-21-8-4

Assistance in development and operation of forensic medical exams and additional forensic services

Sec. 4. The victim services division of the Indiana criminal justice institute shall assist in the development and operation of programs that provide forensic medical exams and additional forensic services to alleged sex crime victims, and if necessary, provide grants to hospitals for this purpose.

As added by P.L.2-1993, SEC.4. Amended by P.L.47-1993, SEC.8; P.L.121-2006, SEC.26.

IC 16-21-8-5

Payment of forensic medical exams; requirements; suspension

Sec. 5. (a) The division shall award compensation or reimbursement under this chapter for forensic medical exams.(b) The division is not required to award compensation or reimbursement under this chapter for additional forensic services unless the following conditions are met:

- (1) The victim is at least eighteen (18) years of age.
- (2) If the victim is less than eighteen (18) years of age, a report of the sex crime must be made to child protective services or a law enforcement officer.
- (3) The sex crime occurred in Indiana.

If the division finds a compelling reason for failure to comply with the requirements of this section, the division may suspend the requirements of this section.

- (c) A claim filed for services provided at a time before the provision of the forensic medical exams and additional forensic services for which an application for reimbursement is filed is not covered under this chapter.

As added by P.L.2-1993, SEC.4. Amended by P.L.47-1993, SEC.9; P.L.90-2005, SEC.7; P.L.121-2006, SEC.27; P.L.41-2007, SEC.17.

IC 16-21-8-6

Services without charge; reimbursement

- Sec. 6. (a) When a provider provides forensic medical exams and additional forensic services under this chapter to a victim, the provider shall furnish the services without charge.
- (b) When a provider provides additional forensic services under section 5(b) and 5(c) of this chapter, the provider shall furnish the services without charge.
- (c) The division shall reimburse a provider for the cost for providing services and shall adopt rules and procedures to provide for reimbursement.
- (d) The application for reimbursement must be filed not more than one hundred eighty (180) days after the date the service was provided.
- (e) The division shall approve or deny an application for reimbursement filed under subsection (b) not more than one hundred twenty (120) days after receipt of the application for reimbursement.
- (f) A provider may not charge the victim for services required under this chapter despite delays in reimbursement from the division.
- As added by P.L.2-1993, SEC.4. Amended by P.L.47-1993, SEC.10; P.L.36-1997, SEC.8; P.L.90-2005, SEC.8; P.L.121-2006, SEC.28.*

IC 16-21-8-7

Abortion services not required

Sec. 7. This chapter does not require a hospital to provide a service related to an abortion.

As added by P.L.2-1993, SEC.4.

IC 16-21-8-9

Duties of a provider; delayed implementation

- Sec. 9. (a) Prior to the discharge of a victim from the hospital, a provider shall:
- (1) require the victim to sign a form that notifies the victim of his or her rights under this chapter;
 - (2) provide a copy of the signed form to the victim; and
 - (3) inform law enforcement that the sample is available.
- (b) The director of the Indiana criminal justice institute may delay the implementation of this section until the earlier of the following:
- (1) A date set by the director.
 - (2) The date funding becomes available by a grant through the criminal justice institute or by an appropriation from the general assembly.
- If the director of the criminal justice institute delays implementation of this section, the director shall notify the prosecuting attorney of each county of the director's action and when funding become available to implement this section.
- As added by P.L.41-2007, SEC.18.*

IC 16-21-8-10

Law enforcement duty to transport a sample to secured storage; victim notification; county plans

- Sec. 10. (a) Law enforcement shall:
- (1) obtain the sample within forty-eight (48) hours after receiving a provider's notification; and

- (2) transport the sample to secured storage.
- (b) Law enforcement shall keep the sample in secured storage until the earlier of the following:
 - (1) At least one (1) year after the date the sample is placed in secured storage.
 - (2) The victim reports the sex crime to law enforcement and the sample is transported to the crime lab for investigation and use as evidence.
- (c) The division shall notify the victim, as described in subsection (d), that the victim's sample will be removed from secured storage and may be destroyed if the victim does not report the sex crime to law enforcement on or before the date described in subsection (b)(1).
- (d) The notice the division is required to provide a victim under subsection (c) shall be sent:
 - (1) by first class mail to the individual's last known address;
 - (2) by electronic mail to the individual's last known electronic mail address; and
 - (3) six (6) months and thirty (30) days before the date described in subsection (b)(1).
- (e) Each county shall develop and implement a plan for the secured storage of samples.
- (f) The director of the Indiana criminal justice institute may delay the implementation of this section until the earlier of the following:
 - (1) A date set by the director.
 - (2) The date funding becomes available by a grant through the criminal justice institute or by an appropriation from the general assembly.
If the director of the criminal justice institute delays implementation of this section, the director shall notify the prosecuting attorney of each county of the director's action and when funding becomes available to implement this section.
- (g) The failure to comply with:
 - (1) this chapter;
 - (2) a plan adopted by a county; or
 - (3) a protocol adopted by a sexual assault response team;
does not, standing alone, affect the admissibility of a sample as evidence in a criminal or civil proceeding.

As added by P.L.41-2007, SEC.19.

Kit Transportation

SART Listserv May 2007

Background: I am looking for information about how forensic evidence kits are transported from exam sites to crime labs for analysis. Does local law enforcement pick them up? Do you use a lab delivery service? FedEx?

California (Sacramento)

- In Sacramento, law enforcement picks them up and delivers them to the crime lab.

Florida (Pinellas County)

- We do not release to anyone other than a sworn law enforcement official in Pinellas County Florida.
- We are a free standing exam site (not hospital based) so law enforcement is generally always with us at the exam site.
- If they are out investigating they will leave evidence with me for a few hours, but I don't like to do that because it puts me in the chain of custody of evidence and I don't want to jeopardize the case in anyway.

Indiana (Indianapolis)

- Crime Lab picks them up from areas hospitals each Monday.
- The outlying counties often send officers to pick them up. If that fails, the forensic examiner transports them or uses Federal Express. Our State Police Lab confirmed that the chain of custody issue is in the sealing and unsealing of the kit - there could be 300 people that handle that kit in between but as long as that seal is in place those 300 people are irrelevant to the case and have no bearing on chain of custody. J
- We just passed legislation in Indiana that as of July 1, 2007 that mandates law enforcement have 48 hours to pick up the kit once they have been notified. I am not sure how it will be enforced, but at least now, we will have some leverage for law enforcement to pick them up. Here is a link to House Bill 1654.
<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2007&session=1&request=getBill&docno=1654>

Michigan

- The investigating law enforcement agency is responsible for pick-up and transport to the lab.

Texas

- They are released to Law Enforcement; forensic exam sites never store or keep.
- If law enforcement is not present during the exam, have a 20 to 40 minute wait for them after a call to ask them to pick up. (I have been here as long as 3 1/2 hours waiting for a pick up).

Wisconsin

- Law enforcement both hand delivers or federal expresses the kits to the crime lab.
- Wisconsin is a large state and there are only two crime labs (both located in the southern part of the state) that process the kits.