

Chain of Custody – Exams without Law Enforcement Reports
SART Listserv
October 2007

States are listed as a reference; not necessarily as a statewide perspective.

Issue: How have other States overcome chain of custody challenges for victims receiving exams without filing police reports?

Background: A State just passed legislation enabling victims to have forensic exams without reporting to Law Enforcement. Most law enforcement agencies have policies and protocols for handling evidence that require reports and case numbers. It has been suggested that the hospital supply a bar code sticker for the kit and then give it to someone for storage. They even spoke of buying an evidence cabinet and letting the law enforcement agency keep it for a set period of time (90 days) and then destroy it.

Anonymous Reporting – Technical Assistance

The Violence Against Women Act (VAWA), as reauthorized in 2005, requires States to certify that victims of sexual assault are not required "*...to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursement for charges incurred on account of such an exam, or both.*" (Violence Against Women and Department of Justice Reauthorization Act of 2005 (42 U.S.C.A. § 3796gg).

States are to be in compliance with these mandates on or before January 5, 2009, to be eligible for STOP formula grant funds.

The Maryland Coalition Against Sexual Assault (MCASA) has received funding from the Office of Violence Against Women (OVW) to provide technical assistance to States as they work toward implementing changes within their policies and procedures to ensure that they are in compliance. For more information, go to <http://www.mcasa.org/C/4/C4.htm>

Responses from States:

Louisiana

- Law enforcement picks up kits using the patient's hospital ID number. Hospitals keep logs of chain of custody.

Maine

- An anonymous medical forensic exam kit is given its own distinctive tracking number.
- Victims are given tracking numbers in the event that they want to report to law enforcement in the following 90 days.
- The SAFE/SANE knows what town the assault occurred in, as such, contacts the appropriate law enforcement agency that covers that town to pick up the anonymous kit.
- Most law enforcement agencies store kits for 90 days and then discard them if there has been no contact from victims.
- Victims are told which law enforcement agency to contact should choose to make an official report.
- Upon making a report, law enforcement puts the victim's name on the kit and takes it to the crime lab for processing.

New Hampshire

- All anonymous kits are sent to the State Police lab for 60 days.
- Then the kits are sent back to the law enforcement agency in the respective town/county/city and they keep them for a period decided upon by that agency.
- Once a victim reports, the kits is then assigned a name and it kept for as long as needed. Manchester NH keeps anonymous kits for one year.
- Advocates help facilitate ways for victims to keep the anonymous paperwork organized in an envelope. By doing this, victims are more likely to have all the necessary identification numbers and phone numbers should they decide to report after an exam is performed.
- Many victims/survivors receive so much information that it is difficult for them to remember everything. We are in the process of creating a simple, discreet booklet where victims can keep all their information for later contact with law enforcement and court prosecutors.
- We also ask victims if they would like an advocate to call them the next couple of days after the exam. This is helpful for victims who may have questions in the first 24-48 hours after the assault.

New Jersey

- Each county has a SANE coordinator (who is also a SANE) employed by the prosecutor's office.
- SANEs are trained in maintaining the chain of custody.
- If a victim chooses not to report, the forensic exam kit can be kept overnight in a locked drop box at the participating hospital.
- The Coordinator picks up the kit the following day and brings it back to the prosecutor's office.
- The kit is kept at the prosecutor's office in a locked cabinet, evidence room, or similar structure.

- The only difference of this type of evidence from other case evidence is that it will be logged-in with only a case number as a John or Jane Doe in order to preserve the anonymity of the victim.
- After a minimum of 90 days, if the victim is still not interested in proceeding, the kit can be destroyed.
- Since the kit is sealed, securely maintained, and accounted for at all times, we find no problem with the chain of custody.

New York

- The kit is kept by hospital police in a locked refrigerator. Chain of custody logs are kept.

SART Listserv - Storing Kits - June 2006

Issue: Has kit storage been a problem for communities (especially urban) that offer anonymous reporting?

Louisiana

- The hospital is obligated to collect the evidence, preserve it, and keep it secured under a code number that is given to the victim, in case he/she decides to report.
- After 30 days, if no law enforcement person retrieves the kit, the hospital can dispose of it.

Maine

- Kits are stored for a minimum of 90 days. The language from the Maine statute follows:

“If the alleged victim has not reported the alleged offense to a law enforcement agency when the examination is complete, the hospital or health care practitioner shall then notify the nearest law enforcement agency, which shall transport and store the kit for at least 90 days. The completed kit may be identified only by the tracking number. If during that 90-day period an alleged victim decides to report the alleged offense to a law enforcement agency, the alleged victim may contact the hospital or health care practitioner to determine the tracking number. The hospital or health care practitioner shall provide the alleged victim with the tracking number on the forensic examination kit and shall inform the alleged victim which law enforcement agency is storing the kit”

New Jersey

- Forensic exam kits for anonymous reports are held per county policy.

- In some cases, the kits are kept by the SANE Coordinator in a locked cabinet; in other cases they are logged into county or local law enforcement evidence rooms using the case number only; and in one other case, the kits are stored at the hospital.
- If the victim is not releasing the kit to law enforcement at the time of the exam, only the case number is written on the outside of the box, not identifying information about the victim.

Ohio (Cleveland)

- Law enforcement resists storing anonymous kits indefinitely.

Tennessee

- Our program is hospital based and the hospital is publicly owned. They report all felonies, including sexual assaults, to assure compliance with Tennessee reporting statutes. When law enforcement responds, it is with the understanding that it is up to the patient / victim whether they want to speak with police. Victims are encouraged to have an exam, regardless of whether or not they report. The hospital has neither the space nor the inclination to be in the evidence storage business however.
- When exhibits are collected in this manner, the officer makes a "suspicious situation" report (using the patient's hospital ID # or name) with the general information (i.e.: date & time presented at ER).
- Any exhibits collected are booked in under that report number for tracking purposes.
- From a law enforcement perspective, there is a storage problem. Right now, we are relying on the statute of limitations (seven years for rape in Tennessee).
- I can foresee a time in the near future where we will have to set an arbitrary time limit, where if the victim has not come forward to seek prosecution, that the evidence would have to be destroyed in several months to a year. I've never seen a property / evidence room that had "too much" space or enough technicians.

Vermont

- Provides the option of "confidential" reporting (e.g., the kit is marked with only the kit number on the outside and only initials inside, so technically identification is only possible through the medical record at the hospital) if a survivor doesn't want to report to law enforcement.
- Those kits are transported from the hospital by law enforcement in that jurisdiction to the state lab, where evidence is processed (and non-victim DNA is entered into CODIS, which is partly why they're no longer considered "anonymous" kits). The kit is held for six months. Once the six months are up, the kit is sent back to the law enforcement office to be destroyed.

Supplemental Information

Iowa passed a bill last year that mandated storage of the kits for 10 years regardless of whether the victim filed a report with law enforcement. The bill can be found at: http://www.legis.state.ia.us/scripts/Bill_Amend_d7_v2.dll

AN ACT RELATING TO EVIDENCE IN A SEXUAL ABUSE CASE. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA: Section 1. NEW SECTION. 709.10 SEXUAL ABUSE - EVIDENCE.

1. When an alleged victim of sexual abuse consents to undergo a sexual abuse examination and to having the evidence preserved, a sexual abuse evidence collection kit must be collected and properly stored with the law enforcement agency under whose jurisdiction the offense occurred or with the agency collecting the evidence to ensure that the chain of custody is complete and sufficient.
2. If an alleged victim of sexual abuse has not filed a complaint and a sexual abuse evidence collection kit has been completed, the kit must be stored by the law enforcement agency for a minimum of ten years. In addition, if the alleged victim does not want their name recorded on the sexual abuse collection kit, a case number or other identifying information shall be assigned to the kit in place of the name of the alleged victim.