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Sexual Assault Nurse Examiner Program Guidance Document

FORENSIC EXAM: EVIDENCE COLLECTION

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Sexual Violence shatters lives, wounds communities, and perpetuates injustice. The Florida Council Against Sexual Violence leads, informs, and inspires the people of Florida to create safe and just communities.

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INTRODUCTION

The Florida Council Against Sexual Violence (FCASV) supports the provision of timely forensic exams for survivors of sexual violence by registered nurses who, at a minimum, have taken an approved International Association of Forensic Nurses 40 hour Sexual Assault Nurse Examiner (SANE) training. A medical forensic exam (MFE), includes evidence collection, is voluntary, is confidential, is no cost to the victim and requires informed consent. The survivor has the choice to report the assault to law enforcement. (Note: It is outside the scope of practice, established by the Florida Board of Nursing, for licensed practical nurses to perform forensic exams upon survivors of sexual violence.)

The purpose of evidence collection is to preserve medical, forensic, verbal and physical evidence thus allowing for DNA analysis, as well as, aiding in the investigation of a reported sexual assault. The manner in which a survivor comes to obtain a MFE, which may or may not include evidence collection, varies from one SANE program to another. **If a survivor questions whether or not a MFE is needed or if evidence should be collected**, **it is best practice for the SANE (the medical professional) to provide guidance regarding the risks, benefits, and alternatives to assist the survivor in making a decision**. Additionally, if the survivor desires information regarding whether or not to report the assault to law enforcement, the SANE is able to discuss the survivor's options.

Known best practices and evidence based knowledge and research form the basis for evidence collection, packaging, and testing recommendations. In August of 2017, the National Institute of Justice published *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach* providing 35 best practice recommendations "to improve the response to sexual assault from initial victim disclosure through laboratory testing." In this publication, the chapters most pertinent to this guidance document are Chapter 2: The Medical-Forensic Exam and Sexual Assault Evidence Collection and Chapter 3: Transparency and Accountability of Law Enforcement for SAKs (sexual assault kits).

Recommendations in Chapter 2: The Medical-Forensic Exam and Sexual Assault Evidence Collection

- Establish minimum standards for a national sexual assault kit (SAK); until that time, states and territories should create a standardized SAK for sexual assault cases that addresses the minimum criteria in the National Adults/ Adolescents Protocol.
- The medical-forensic exam should be performed by a health care professional specifically trained in the collection of evidence relating to sexual assault cases such as a sexual assault nurse examiner or other appropriately trained medical professional.

- Guided by the victim history, sexual assault samples should be collected from any victim seeking care as soon as possible and up to five (5) days or longer post-assault. Regardless of the time frame, reimbursement should be provided for the medical-forensic exam.
- Examiners should concentrate the collection of evidentiary samples by using no more than two swabs per collection area so as not to dilute the biological sample.
- Sample collection should be an option for all sexual assault victims who present for a medical-forensic exam, including those who choose not to report (unreported) or report anonymously.
- Suspect sample collection should ideally be completed by a medical-forensic examiner or appropriately trained individual.
- Due to increased sensitivity in DNA technologies, masks and gloves should be used by all medical-forensic care providers and others in the collection and packaging of evidence, especially during the collection of intimate samples.
- Policies for medical-forensic record retention should be created in accordance with statutes of limitations and other criminal justice needs rather than with traditional parameters for medical record keeping, storage, retention, and destruction.

Recommendations in Chapter 3: Transparency and Accountability of Law Enforcement for SAKs

- Law enforcement agencies and laboratories should partner to use one evidence tracking system.
- The federal government should develop an Electronic Evidence Exchange Standard for the data standards associated with physical forensic evidence.
- SAKs should be received by the local law enforcement agency from the hospital or clinic as soon as possible, ideally, no later than three (3) business days from the collection of the kit, or as specified by statute.
- Law enforcement agencies should submit the SAK to the laboratory for analysis as soon as possible, ideally, no later than seven (7) business days from the collection of the SAK, or as specified by statute.
- Law enforcement or laboratories should be responsible for the long term storage of all SAKs, unless applicable law provides otherwise.
- A comprehensive inventory should be conducted to determine the number, status, location, and individual descriptive information (e.g., unique kit identifier, date collected) for all SAKs.
- Law enforcement agencies should perform an annual audit verifying that all SAKs in the property room are present and in their specified location.

This particular document focuses on providing guidance for evidence collection. It does not address providing emotional support to the survivor, or conducting a medical assessment or health history, treating minor injuries, proper documentation, photography, or making referrals.

A. EVIDENCE COLLECTION FORMS

In Florida, standardized medical forensic examination paperwork is available for all certified rape crisis centers (RCC) to use. The standardized medical forensic examination paperwork consists of, the SART Consent Form (Appendix I); Adult / Adolescent Medical History and Initial Assessment form; Adult / Adolescent Sexual Assault Forensic Examination Form; Toxicology Services, Sexual Assault Work Request Form; and the Sexual Battery Forensic Examination Claim Form, refer Adult / Adolescent Sexual Assault Forensic Examination form; Toxicology Services, Sexual Assault Work Request Form and the Sexual Battery Forensic Examination Claim Form.

NOTE: Rape Crisis Centers and Hospitals have the ability to modify the forms to align with their protocols / policies.

B. TIMING OF EVIDENCE COLLECTION

When a survivor seeks a MFE after a sexual assault, the top priority is to assess the survivor for immediate medical needs. If it is determined the patient needs emergent medical care, the patient must be in the hospital setting (emergency room, operating room, recovery room or an intensive care unit) and the SANE must collaborate with the hospital medical personnel regarding the timing of evidence collection. If the patient is unable to provide consent for the MFE, the SANE must understand who may or may not provide consent for evidence collection (refer to FCASV's Guidance Document, Diminished Capacity/Inability to Consent and/or Florida Statute Section 765.401, F.S., Appendix II).

DNA testing has evolved and advanced over the years, and the sensitivity of DNA testing has increased significantly; therefore, the time limit for testing evidence has extended. Although the time limit for vaginal evidence collection is now 120 hours (five days), there may be a situation in which evidence collection beyond 120 hours is acceptable (the SANE should be the person making this decision). The following table provides recommended timeframes for evidence collection per the *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*.

RECOMMENDED TIME FRAMES FOR EVIDENCE COLLECTION Type of Assault	Collection Time
Vaginal	Up to 120 hours (5 days)
Anal	Up to 72 hours (3 days)
Oral	Up to 24 hours (1 day)
Bite marks/saliva on skin	Up to 96 hours (4 days)
Unknown	Collect respective samples within the time frames listed above

C. SEXUAL ASSAULT EXAMINATION (SAE) KIT and CONTENTS

In Florida, developing and approving the standard SAE Kit is the responsibility of the Florida Department of Law Enforcement (FDLE) Crime Laboratory (biology section). Inside the SAE Kit are smaller envelopes labeled for various collection sites. The large majority of hospitals and rape crisis centers use the FDLE SAE Kit.

D. REPORTING, NON-REPORTING AND ANONYMOUS SURVIVORS WITH AND WITHOUT EVIDENCE COLLECTION

The SANE discusses with the patient, at the beginning of the encounter, what the patient's options are regarding reporting the assault to law enforcement (with identity known or not known) and having evidentiary samples collected (with or without reporting).

- **A reporting patient is one** who chooses to report a sexual assault and provide law enforcement information regarding the assault. The reporting patient may choose to have a MFE with no evidence collected or a MFE with evidence collected.
- **A non-reporting patient is one** who chooses not to report to law enforcement. Under this circumstance, there is no police or incident report initiated. The patient may choose to have a MFE, with or without evidence collected. If evidence is collected, it should be preserved and maintained per your agency's protocols.
- **An anonymous patient.** Not all jurisdictions within Florida offer the option for anonymous reporting. In jurisdictions that do, an anonymous patient is one who chooses to report (or not), have evidence collected (or not), and to remain anonymous. In this case, the identity of the patient must remain unknown. The medical chart and SAE Kit are assigned an identification number. Refer to your agency's protocols regarding the procedure for anonymous patients.

PATIENT OPTIONS

OPTIONS 1 – 6 are referring to patients who release their identity:

1. **Report the assault and have a MFE with evidence collection**
   The law enforcement agency that has jurisdiction over the geographic area of where the assault occurred will follow their protocols upon receipt of the call. The SANE obtains consent, the patient's medical history using the Medical History Form, the sexual assault history using the Sexual Assault Forensic Examination History Form, conducts the MFE, collects and packages the evidence, submits the correctly labeled and packaged SAE Kit to law enforcement, and completes the chain of custody form.

2. **Report the assault and have a MFE with no evidence collection**
   The law enforcement agency that has jurisdiction over the geographic area of where the assault occurred will follow their protocols upon receipt of the call.

The SANE obtains consent, the patient's medical history using the Medical History Form, the sexual assault history using the Adult / Adolescent Sexual Assault Forensic Examination Form, conducts the MFE, and **does not** collect evidence.

3. **Report the assault and chooses not to seek medical care**
   The survivor calls law enforcement and the law enforcement agency that has jurisdiction over the geographic area of where the assault occurred will follow their protocols upon receipt of the call. **The patient chooses not to have a MFE and the SANE does not see the patient.** The survivor may or may not seek medical care / treatment with their primary care provider, at a walk in clinic, or in an emergency room.

4. **Not report the assault and have a MFE with evidence collection**
   There is no report to law enforcement. The SANE obtains consent, the patient's medical history using the Medical History Form, the sexual assault history using the Adult / Adolescent Sexual Assault Forensic Examination Form, conducts the MFE and collects evidence. The SANE follows the facility's protocol as to where the SAE Kit is stored. (A SAE Kit is not to go to the crime lab if there is no report to law enforcement. Instead, the SAE Kit is stored per the facility's protocol, in case the patient changes their mind and wants to report the assault.)
   If the patient changes their mind and wants to report the assault, they must sign a medical release authorizing the medical provider to make their identity known, the Adult / Adolescent Sexual Assault Forensic Examination Form available to the law enforcement agency, and the SAE Kit available to be tested. ***The medical record is not released and it is best practice not to release the photographs.*

5. **Not report the assault and have a MFE with no evidence collection**
   There is no report to law enforcement. An agency's protocol for a patient who is not going to report but wants a MFE with no evidence collected will vary. In some communities, this patient is referred for a medical exam, or "partial" exam and STI, HIV and pregnancy prophylaxis, to their primary health care provider, the local county health department, or hospital. In other communities, the Rape Crisis Center or hospital will have the patient see a SANE and the SANE may provide STI, HIV and pregnancy prophylaxis. In this case, the SANE obtains the patient's medical history using the Medical History Form, obtains and documents the sexual assault history using the Adult / Adolescent Sexual Assault Forensic Examination Form, conducts the MFE, and does not collect evidence.
   If the patient changes their mind and wants to report the assault, they must sign a medical release authorizing the medical provider to make their identity known and the Adult / Adolescent Sexual Assault Forensic Examination Form available to the law enforcement agency. ***The medical record is not released.*

6. **Not report the assault and not have a MFE**
   There is no report to law enforcement, **the SANE does not see the patient** and the survivor may or may not seek medical care / treatment with their primary care provider, at a walk in clinic, or in an emergency room.

OPTIONS 7 and 8 are referring to patients who choose to be anonymous and are applicable to those jurisdictions that receive anonymous reports.

7. **An anonymous reporter to law enforcement, has a MFE, and no evidence collected**. In this case, the law enforcement agency that has jurisdiction over the geographic area where the assault occurred will follow its protocols. If the patient desires a MFE, the SANE obtains the patient's medical history using the Medical History Form, obtains and documents the sexual assault history using the Adult / Adolescent Sexual Assault Forensic Examination Form, conducts the MFE, and does not collect evidence. Label the anonymous patient's medical history form and forensic exam paperwork per the agency's protocol (e.g., a type of identifying number without any identifying patient information on the paperwork).

8. **An anonymous reporter to law enforcement, has a MFE, and has evidence collected**. In this case, the law enforcement agency that has jurisdiction over the geographic area where the assault occurred will follow its protocols. The SANE obtains the patient's medical history using the Medical History Form, obtains and documents the sexual assault history using the Adult / Adolescent Sexual Assault Forensic Examination Form, conducts the MFE, and collects evidence. The SANE labels the anonymous patient's medical history form, the adult / adolescent sexual assault forensic exam paperwork, and SAE Kit per the agency's protocol (e.g., a type of identifying number without any identifying patient information on the paperwork or outside the SAE Kit envelope / paper bags).

   NOTE: the minor or vulnerable adult who receives care for sexual assault cannot be a non-reporter or an anonymous reporter since by Florida statute a health care professional is a mandatory reporter for these populations.

E. EVIDENCE COLLECTION (Refer to Appendix III) AND PACKAGING

Some patients will choose to have some areas of their body sampled for evidence, but not other areas. The SANE honors all of the patient's choices at all times. Collecting evidence is not conditional on whether or not a patient is going to report the assault to law enforcement.

1. **General principles of evidence collection and packaging:**
   a. Obtain informed consent

b. Evidence collection is guided by the assault history and chain of custody is maintained at all times (see Section F. below)
c. Open the SAE Kit prior to starting the MFE and set up your working space for evidence collection
d. All sleeves of the original swab packaging or the swab boxes should be labeled with the part of the body the evidence has been acquired from (it is best to do this prior to the exam to avoid confusion)
e. Wear gloves and change gloves each time the area of evidence collection changes, e.g., from skin to genitalia
f. Wear a mask during evidence collection to avoid contamination (this has become more important as the sensitivity of DNA analysis has increased)
g. Use only 1 to 2 drops of sterile water for moistening swabs
h. Examiners should concentrate the collection of evidentiary samples by using no more than two swabs per collection area so as not to dilute the biological sample
i. It is acceptable to use a small amount of water soluble, non-spermicidal lubricant on the anterior and posterior bill of the speculum
j. Vaginal swabs do not need to be moistened unless the vaginal vault / posterior fornix is extremely dry
k. All swabs should be completely dry (keep away from fans), prior to placing back in the sleeve of the original packaging (cotton tip down) OR placing in a swab box
l. Avoid contamination of swabs: keep swabs, from different body areas, from touching each other
m. May package swabs from the same body area together in the same envelope / swab box if your lab is in agreement
n. Package articles of clothing separately, in a paper bag with every bag labelled with patient identifying information, date, examiner's signature / initials, the area the perpetrator touched or where there would be possible evidence (e.g., right sleeve of shirt) – if anonymously reporting, follow D. 8. above
o. Label the outer SAE Kit envelope with the patient's identifying information (unless anonymously reporting then follow D.8. above)
p. Label the inner SAE Kit envelopes with the patient's identifying information and the site of collections (whether reporting anonymously, or not) these inner envelopes will not be opened unless the patient signs a release for testing)
q. At a minimum, the outer SAE Kit envelope is to be labeled with the patient's name, exam date, agency case number and the SANE's name (unless anonymously reporting, follow D. 8. above)
r. The outer SAE Kit envelope and any clothing bag is sealed and initialed in the manner in which the 40 hour SANE Training instructed (completely across seams and initialed at every juncture, Appendix IV)
s. SAE Kits should not be refrigerated unless the evidence is wet (see H. Storing SAE kits)

2. WET EVIDENCE: See H. Storing SAE Kits and follow jurisdictional policy

a. Alert involved law enforcement representatives about the presence of wet evidence and the need for its immediate analysis, further drying or refrigeration
b. If female patients are menstruating, collect tampons, pantyliner and sanitary napkins. Air-dry them as much as possible and then place them in a separate paper collection bag.

Condom:

c. If apparent liquid inside, collect with dry swab(s) and allow swab(s) to dry completely before packaging, and
d. Lay condom on absorbent paper and allow to air dry completely before packaging, and
e. Package the paper/condom and the swab(s) in an envelope or paper bag for submission. (**FDLE Evidence Submission Manual, 2017**)

NOTE: If excessive moisture is present, place it into an unsealed plastic bag or container and then inside a paper bag, sealing and labeling the paper bag appropriately. (OAG Guidelines and *The Biological Evidence Preservation Handbook: Best Practices for Evidence Handlers, page 10*)

3. TOXICOLOGY

- **Per *A National Protocol for Sexual Assault Medical Forensic Examinations Adults/Adolescents*, 2013:** "Toxicology samples should be collected as soon as possible after a suspected drug-facilitated case is identified and informed consent is obtained, even if patients are undecided about reporting to law enforcement."
- **In cases where DFSA is suspected (FDLE Evidence Submission Manual, 2017 (pages 57 – 58):**
  a. Routine toxicology analysis of DFSA cases includes testing urine and/or whole blood for a panel of drugs associated with this type of case
  b. Package toxicology evidence separate from biological evidence.
  c. The best toxicology sample to collect from the victim is urine, at least 30 milliliters but preferably 100 milliliters and up to 72 hours after the incident. Collected in a clean plastic or glass container.
  d. Collect blood samples, when appropriate and up to 24 hours after the incident. A blood sample of at least 20 milliliters should be collected in the tube provided in the FDLE toxicology Kit or according to jurisdictional policy.
  e. If a blood sample is collected for toxicology screening, it should be accompanied by a urine sample. However, if a blood or urine sample is unable to be obtained, it is acceptable to submit one without the other.
  f. It is very important that background information (symptoms of the patient, as reported) is provided in order to assure appropriate toxicology screening tests are completed.
  g. To maximize the evidentiary value of samples it is best if the patient does not urinate until after evidence is collected. If the patient cannot wait, document the approximate number of urinations.

4. **TOUCH DNA - SWABS**

The number of swabs used to collect samples has changed over time. Recently, the guidance was to use two swabs for every different area of collection (for example, two swabs for the labia majora, two swabs for the fossa navicularis, etc.). The most recent recommendation (National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach) is to use a total of two (2) slightly moistened swabs for the same body area, e.g., two for all external genitalia / the vaginal vestibule (including labia minora, clitoris, hymen, fossa navicularis, and posterior fourchette). Research has shown using two swabs for one body area yields a higher concentration of DNA.

There will be times when the patient does not recall the assault details, such as whether or not oral, vaginal or anal penetration or touching occurred. In this case, the standard for collection of evidence is as follows:

a. Collect urine and blood samples, if indicated (see above referenced toxicology samples).
b. Using the SAE Kit obtain the following:
    - Buccal
    - Oral
    - Hands
    - Neck
    - Breasts
    - Penis, scrotum (male)
    - Vaginal Vault and Vaginal Vestibule (female)
    - Perianal folds / anus

5. **CLOTHING**

Only collect clothing pertinent to the assault which has evidentiary value and only after consent from the patient (the patient needs to know she/he will not get the clothing back). Each piece of clothing is packaged and sealed separately. If there is a need for additional bags, use new grocery-style paper bags only (Appendix V).

- Determine if the patient is wearing the same clothes worn either during or immediately following the assault. Collect the items if they might contain possible evidence.
- If the patient is not wearing the same clothing that they did either during or immediately after the assault, the SANE should inquire as to the location of that clothing. If that clothing has not been brought to the exam site, information on clothing location should be provided to law enforcement (if involved) so that clothing can be retrieved and examined before any potential evidence is destroyed.
- If relevant to the case, collect underwear worn at the time of, or immediately after the assault, it may also be important to collect underwear the patient is wearing at the time of the exam.

Procedures for collecting trace evidence dislodged while undressing:

- Place a large clean sheet (e.g., a paper drape used for a patient exam works well) on the floor as a barrier. Then place the evidence collection paper (same type of paper drape may be used) on the barrier sheet. Patient removes shoes prior to stepping on to the evidence collection paper sheet and then undresses over the collection paper to catch any foreign material that is dislodged.
    - If someone assists, she/he should wear gloves.
    - The evidence collection paper sheet is packaged as evidence in a separate paper bag and per forensic evidence packaging protocol.
    - The barrier sheet is not submitted as evidence.
    - Clothing is packaged separately, one item per paper bag

6. PHOTOGRAPHS AS EVIDENCE

General principles of photographs as evidence:

a. ***It is best practice for the photographs to be "primarily considered part of the patient's medical record and should not be automatically turned over to law enforcement."*** (A National Protocol for Sexual Assault Medical Forensic Examinations Adults/Adolescents, 2013). **Florida Council Against Sexual Violence supports this best practice.**
b. Photographs are a part of the patient's medical records and they would need to be subpoenaed in order to be part of a subsequent trial
c. The first and last photograph should be a link to the patient's identification: For example, include patient name, date, and time as the first and last image. Follow jurisdictional policy for whether to include an image of the child's face with this identifying information.
    a. If a full body photograph for identification purposes the patient should be fully clothed or in a gown
d. Consent for photographs should be separate from the consent obtained for the MFE, this provides clarity to the patient that the MFE may be done without photographs taken
e. The consent should include an explanation of who secures the photographs, where they are stored and why they would be released
f. It is best practice for SANEs , rather than law enforcement, to take all photographs because the patient is often more comfortable and less traumatized when the SANE takes the photographs.
g. Genitalia photographs must be taken by SANEs or medical personnel and never in the presence of law enforcement.
h. Photographs are evidence, just as touch DNA and clothing are evidence, and are a supplement to the forensic history and physical findings, but are not considered part of the SAE Kit
i. Any photograph taken should have corresponding documentation of the physical finding

j. Photographs should include: a physical orientation shot of the body part to be photographed, a macro (close up) shot with scale, and a macro shot without scale (including a mid-range shot is also acceptable)
k. Photographs should be taken prior to disturbing the area to be photographed and once again after the area is clean (if indicated)
l. Once a photograph is taken it should never be deleted
m. A photograph log form (an example may be found within the Adult / Adolescent Sexual Assault Forensic Examination Form), should be used for documenting photographs taken
n. Refer to jurisdictional or sexual assault response teams (SART) policies and procedures regarding taking the photographs, photography documentation and photograph storage
o. Policies regarding the storage, transfer and retention of photographs should exist

F. CHAIN OF CUSTODY (COC)

With all SAE Kits and/or photographs, the COC process must be followed to ensure the integrity of the evidence and "is critical to its subsequent use in criminal proceedings." Each jurisdiction must have a COC form documenting who released the kit, who received the kit, the time, the date and the items transferred. Per *A National Protocol for Sexual Assault Medical Forensic Examinations Adults/Adolescents, 2013*:

"Document the handling, transfer, and storage of evidence. Examiners must maintain control of evidence during the exam, while evidence is being dried, and until it is in the Kit container and sealed (and then follow jurisdictional procedures for storing evidence securely or handing it over to a duly authorized agent for transfer to a storage site). Documentation should continue with each transfer of the evidence to law enforcement, the crime laboratory, and others involved in the investigative process. Patients, advocates, family members, and other support persons should not handle the evidence. Documentation of the chain-of-custody information is vital to ensuring that there has been no loss or alteration of evidence prior to trial. Educate all those involved in handling, transferring, and storing evidence regarding the specifics of maintaining the chain of custody. If the patient is transferred between facilities, staff at both facilities should be careful to complete this documentation."

NOTE: A transfer of evidence / chain of custody form is included in the Adult / Adolescent Sexual Assault Forensic Examination Form

G. SAE KITS SUBMITTED AND NOT SUBMITTED FOR TESTING

- Per s. 943.326 F.S. (Appendix VI) an agency who receives a SAE Kit, from a reporting survivor, must submit the SAE Kit to a laboratory within 30 days for testing and once received by the laboratory, processing must occur within 120 days.
- A non-reporting survivor's SAE Kit is not submitted for testing by the storing agency unless a non-reporting survivor converts to a reporting survivor and signs a

release. (Currently there is discussion as to whether, or not, testing a non-reporting kit would violate the confidentiality and privacy of the victim's health records under the Health Insurance Portability and Accountability Act (HIPAA).)

- For a Florida Department of Law Enforcement (FDLE) or regional county laboratory to process evidence from a SAE Kit, there must be an accompanying law enforcement report and completed Adult / Adolescent Sexual Assault Forensic Examination Form.

H. STORING SAE KITS

The storing of SAE Kits varies from jurisdiction to jurisdiction. The hospital, the law enforcement agency, or the rape crisis center (RCC) are examples of who might store the SAE Kits. A best practice recommendation is that law enforcement to store the evidence (not the hospital nor the RCC); however, this is not possible in some jurisdictions.

General principles for storing SAE Kits:

a. Determine what agency has the capacity, is willing and has needed security measures in place to store the kits and maintain the integrity of the evidence
b. In Florida, s. 943.326 (3) F.S. states, "a collected SAE Kit must be retained in a secure, environmentally safe manner until the prosecuting agency has approved its destruction." The statute of limitation for storing SAE Kits, in Florida, varies depending on the nature of the crime.
c. Toxicology kits are to be refrigerated
d. Keep evidence out of extreme heat (trunks of cars)
e. Non-reporting survivors with evidence collected: follow your agency's labelling and storage protocol
f. A tracking system should be developed in order to notify the survivor when evidence is due to be destroyed

Recommendations for short-term storage of evidence is in the table below and taken from National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach:

SHORT-TERM STORAGE CONDITIONS MATRIX

Type of Evidence	Frozen[a]	Refrigerated[b]	Temperature Controlled[c]	Room Temperature[d]
Liquid blood	**Never**	Best	Less than 24 hours	
Urine	Best	Less than 24 hours		
Dry biological stained item			Best	Acceptable
Wet items (if they can't be dried)	Best	Acceptable	Less than 24 hours	
Hair			Best	Acceptable
Swabs with biological material		Best (wet)	Best (dried)	
Buccal swabs			Best	Less than 24 hours

[a] *Frozen:* Temperature is maintained thermostatically at or below –10 °C (14 °F). [b] *Refrigerated:* Temperature is Maintained thermostatically between 2 °C and 8 °C (36 °F and 46 °F) with less than 25% humidity. [c] *Temperature controlled:* Temperature is maintained thermostatically between 15.5 °C and 24 °C (60 °F to 75 °F) with less than 60%

humidity. [d] *Room temperature:* Temperature is equal to the ambient temperature of its surroundings; storage area may lack temperature and humidity control methods. Source: Adapted from Technical Working Group on Biological Evidence Preservation, *The Biological Evidence Preservation Handbook: Best Practices for Evidence Handlers*. (Gaithersburg, MD: U.S. Department of Commerce, National Institute of Standards and Technology, 2013), 17-18, doi: 10.6028/NIST.IR.7928.

QUESTIONS of NOTE:

1. Sometimes there are long delays in waiting for evidence to be picked up by LE and/or at times evidence requires significant drying and we do not have the swab dryer equipment at hospital. Are there any rules about if or when a SANE can transport the evidence?

   ANSWER: The interpretation of the Attorney General's protocol and a review of the chain of custody (COC) literature indicates it would be appropriate for the SANE to transport the evidence in the circumstance you described.

   Key points: write an addendum to the chain of custody form detailing the transfer, if there is a "witness" to the transfer it would be appropriate to have him/her sign the addendum, ensure the security of the evidence during transport and consider having a locked container in the car for transport (in case of an accident), follow all of your center's usual and customary evidence drying and storage protocols. Being able to describe and defend that there was continuity of possession, and proof of integrity of evidence collected is key to the materials being legally accepted as evidence in court.

2. Should vaginal vault swabs (internal vaginal swabs) include the vaginal walls?

   ANSWER: Although it is not prohibitive, it is not included in the *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach* publication. This publication was the result of the National Institute of Justice's multi-disciplinary working group of subject matter experts who met for over two years. The Florida Council Against Sexual Violence supports the conclusions and best practices recommendations outlined in the *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach* publication.

APPENDIX I

SART Program Consent Form
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_____	_____	_____	_____
Patient Name	Date & Time	Case #	Center's #

I, _____, freely consent to a forensic medical examination conducted by a medical professional in order to collect and preserve any potential evidence of the described assault. This procedure has been fully explained to me and I understand that I may refuse any portion of the examination at any time. If I decide to report, a copy of the forensic exam and any potential evidence obtained will be released to the law enforcement agency and the State Attorney's Office for the appropriate jurisdiction. Collection of other specimens and/or samples for laboratory analysis may be conducted per the events reported.

Patient Information

- I understand that healthcare facilities and their personnel must report certain crimes to law enforcement authorities in cases that a patient seeks medical care.
- I have been informed that Florida law provides that a victim of sexual offense shall not be charged for the costs of a forensic evidentiary exam.
- I understand that I do not need to report to law enforcement to receive this service. I understand that I have the option to have the examination performed and report at a later time if I choose to do so.

I consent to the following initialed items.

Initial for consent		Description of procedure or request
1.		Head to toes examination with visual inspection of injuries and possible areas of assault including the mouth, the genitalia and the rectum.
2.		Photographic documentation of any injuries including area of the mouth, genitalia, and anus.
3.		Photos will become part of the official record of this case and may be used for peer/chart review within the agency. Photos are only released to law enforcement and or state attorney's office with the consent of the patient and/or via a subpoena.
4.		Photos may be used for educational/training purposes. At no time will a name or any other identifying structure be associated with patient or the case.

Initial for consent		Description of procedure or request
5.		Collection of blood and urine for laboratory testing of possible drug facilitated assault.
6.		Administration of medication for prevention of infection and/or pregnancy.
7.		Provide first aid treatment to any superficial injuries.
8.		Provide information for follow-up testing for the diagnosis of HIV and sexually transmitted infections at the Health Department.
9.		Provide follow up communications from advocates and/or counselors.
10.		I consent to the above statements at this time BUT would like any potential evidence collected and held until I decide to report to law enforcement.
11.		I decline the forensic examination at this time. However, I understand that I have 120 hours from the time of incident to reconsider examination.
12.		Collection of clothing to be submitted to evidence (please see chain of custody for list of items submitted).
13.		Declination of Medical-Forensic Evidence: I have been informed of the process of the medical-forensic examination and wish to decline the exam at this time. I understand that an examination may be conducted up to 120 hours/5 days after an assault. In the event that I should change my mind and wish to receive an examination, it was explained to me that I may return during this time frame. It was, however, specified that the increased time between assault and specimen collection decreases the possibility of recovery of adequate specimens for analysis.

Date of Assault: _____ Medical Forensic Examination possible up until:_____

_____ _____

Print Name (patient) Signature (patient)

_____

Date/Time

_____ _____

SANE/Forensic Examiner – Print Name SANE/Forensic Examiner- Signature

_____

DATE/Time

APPENDIX II

Title XLIV CIVIL RIGHTS	Chapter 765 HEALTH CARE ADVANCE DIRECTIVES

765.401 The proxy.—

(1) If an incapacitated or developmentally disabled patient has not executed an advance directive, or designated a surrogate to execute an advance directive, or the designated or alternate surrogate is no longer available to make health care decisions, health care decisions may be made for the patient by any of the following individuals, in the following order of priority, if no individual in a prior class is reasonably available, willing, or competent to act:

(a) The judicially appointed guardian of the patient or the guardian advocate of the person having a developmental disability as defined in s. 393.063, who has been authorized to consent to medical treatment, if such guardian has previously been appointed; however, this paragraph shall not be construed to require such appointment before a treatment decision can be made under this subsection;

(b) The patient's spouse;

(c) An adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;

(d) A parent of the patient;

(e) The adult sibling of the patient or, if the patient has more than one sibling, a majority of the adult siblings who are reasonably available for consultation;

(f) An adult relative of the patient who has exhibited special care and concern for the patient and who has maintained regular contact with the patient and who is familiar with the patient's activities, health, and religious or moral beliefs; or

(g) A close friend of the patient.

(h) A clinical social worker licensed pursuant to chapter 491, or who is a graduate of a court-approved guardianship program. Such a proxy must be selected by the provider's bioethics committee and must not be employed by the provider. If the provider does not have a bioethics committee, then such a proxy may be chosen through an arrangement with the bioethics committee of another provider. The proxy will be notified that, upon request, the provider shall make available a second physician, not involved in the patient's care to assist the proxy in evaluating treatment. Decisions to withhold or withdraw life-prolonging procedures will be reviewed by the facility's bioethics committee. Documentation of efforts to locate proxies from prior classes must be recorded in the patient record.

(2) Any health care decision made under this part must be based on the proxy's informed consent and on the decision the proxy reasonably believes the patient would have made under the circumstances. If there is no indication of what the patient would have chosen, the proxy may consider the patient's best interest in deciding that proposed treatments are to be withheld or that treatments currently in effect are to be withdrawn.

(3) Before exercising the incapacitated patient's rights to select or decline health care, the proxy must comply with the provisions of ss. 765.205 and 765.305, except that a proxy's decision to withhold or withdraw life-prolonging procedures must be supported by clear and convincing evidence that the decision would have been the one the patient would have chosen had the patient been competent or, if there is no indication of what the patient would have chosen, that the decision is in the patient's best interest.

(4) Nothing in this section shall be construed to preempt the designation of persons who may consent to the medical care or treatment of minors established pursuant to s. 743.0645.

History.—s. 5, ch. 92-199; s. 12, ch. 94-183; s. 32, ch. 99-331; s. 15, ch. 2000-295; s. 7, ch. 2001-250; s. 136, ch. 2001-277; s. 13, ch. 2002-195; s. 5, ch. 2003-57.

APPENDIX III

National Institute of Justice, *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach,* August of 2017

	EXHIBIT 4: COLLECTION OF SWABS AND OTHER ITEMS	
Swab Type	**Adult/Adolescent**	**Pediatrics**
Anus/Perianus	Use lightly moistened swabs, packaged together, unless the history indicates otherwise.	Same in children.
Clothing	Clothing should be packaged separately from the SAK and labeled, with each item in its own paper bag. Please note that the examination of clothing should only occur in the forensic laboratory.	Same in children.
Hair: combing, cutting	Combing of pubic hair may be beneficial; components for combing should be standard in all Kits. Matted pubic hair may be clipped or swabbed with lightly moistened swabs. For victims without pubic hair, samples from the mons pubis collected with two moistened swabs may be considered. If reference samples are collected, they should only be collected by cutting.	Same in children.
Hands	Use one lightly moistened swab to concentrate any potential DNA recovery. Swab the entire palmar surface of each hand separately, and then package and label each envelope separately as left palm or right palm.	Same in children.
Nails	Swab the underside of the fingernails with a lightly moistened swab, unless the victim's history (scratching) indicates that nail clippings would yield additional DNA. One swab should be used for each hand to concentrate the potential for DNA yield. Package and label swabs separately as right and left hand and/or right and left feet (per victim history). Use of tools to scrape underneath the fingernails should be avoided, as it is a potential source for injury and/or infection to the victim.	Same in children.
Nails (clippings)	As indicated by a history of scratching the assailant: package and label separately as right and left hand and/or right and left feet (per victim history). In the alternative, swabbing the nails is acceptable.	Collect if a nail was broken during the abuse/assault and follow the same procedures as with adult/adolescent victims.
Buccal Sample (note this is inserted by the FCASV Best Practices Committee)	Collection of a buccal sample should be the standard mechanism for obtaining DNA for victim reference samples. Use two swabs to swab/rub over the inner aspect of each cheek. Collect the buccal swab as the victim's DNA standard after the oral swab is obtained — rinse mouth after the oral swab is obtained (for evidentiary purposes) and before collection of the buccal swab (the reference standard). (Note this is inserted by the FCASV Best Practices Committee)	Same in children.
Oral cavity	Use two dry swabs to swab/rub over the oral cavity (e.g., around teeth, cheeks, and gums). Dentures and body jewelry from the mouth and lips of the victim can be removed and swabbed if they can't or won't be collected.	Same in children.
Penis and scrotum	Use a total of two lightly moistened swabs from the shaft, glans (including under the foreskin and around the corona), and scrotum, unless the history indicates otherwise; be careful to avoid the urethra (which will yield the DNA of the person being swabbed).	Same in children.
Products of conception (POC)	Tissue samples from the POC are the preferred sample, not just blood from the specimen. Formalin or other preservatives should not be used, as these substances can negatively impact laboratory analysis. Multidisciplinary teams should develop policies to address identifying an appropriate lab for analyzing the specimen if the local lab does not; the collection, handling, and packaging of the specimen; chain of custody; and laboratory analysis.	Not applicable.

Swab Type	Adult/Adolescent	Pediatrics
Rectum	Use two lightly moistened swabs, packaged together, if indicated per patient history (these should be collected separately from the anus/perianus swabs).	Rectal swabs are not recommended, except in cases where injury is significant enough to require sedation or anesthesia.
Skin (from bite wounds or oral contact)[c]	Use two lightly moistened swabs, from each affected area, packaged per jurisdictional policy.[d]	Same in children.
Skin (for touch DNA)	Use two lightly moistened swabs across the affected area (as in cases of strangulation), packaged per jurisdictional policy.[e]	Same in children.
Tampons, condoms, and other wet materials	Tampons, condoms, and foreign objects may be a potential source of DNA and should be preserved and packaged per jurisdictional policy. Diapers, pull-ups, or other absorbent padding may also be potential sources of DNA. Specific drying and/or preservation and packaging techniques recommended by individual forensic laboratories may differ, so local sample collection practices and associated protocols should be developed.[f]	Diapers or other absorbent padding may also be potential sources of DNA. Collect these items if used during or after touching or any genital copulation. Dry, package, and submit as per jurisdictional policy. Follow jurisdictional policies for packaging items too wet to dry at the exam facilities and for refrigerated storage.
Vaginal vault (including posterior fornix, cervix/ cervical os)	Use two dry swabs, packaged together, unless the history indicates otherwise.	Routine internal vaginal swabs are not recommended except in cases where injury is significant enough to require sedation or anesthesia.
Vaginal vestibule (including labia minora, clitoris, hymen, fossa navicularis, and posterior fourchette)	Use two lightly moistened swabs, packaged together, unless the history indicates otherwise.	Same in children. However, extreme care should be taken to avoid inserting the swabs into the introitus.
Underwear	Underwear from the victim should go in the SAK.	**Same in children.**

Swab Type	Adult/Adolescent	Pediatrics
Rectum	Use two lightly moistened swabs, packaged together, if indicated per patient history (these should be collected separately from the anus/perianus swabs).	Rectal swabs are not recommended, except in cases where injury is significant enough to require sedation or anesthesia.
Skin (from bite wounds or oral contact)c	Use two lightly moistened swabs, from each affected area, packaged per jurisdictional policy.	Same in children.
Skin (for touch DNA)	Use two lightly moistened swabs across the affected area (as in cases of strangulation), packaged per jurisdictional policy.	Same in children.
Tampons, condoms, and other wet materials	Tampons, condoms, and foreign objects may be a potential source of DNA and should be preserved and packaged per jurisdictional policy. Diapers, pull-ups, or other absorbent padding may also be potential sources of DNA. Specific drying and/or preservation and packaging techniques recommended by individual forensic laboratories may differ, so local sample collection practices and associated protocols should be developed.	Diapers or other absorbent padding may also be potential sources of DNA. Collect these items if used during or after touching or any genital copulation. Dry, package, and submit as per jurisdictional policy. Follow jurisdictional policies for packaging items too wet to dry at the exam facilities and for refrigerated storage.
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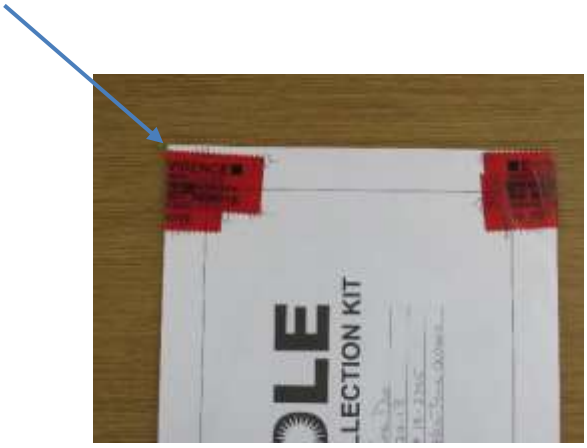
Underwear	Underwear from the victim should go in the SAK.	Same in children.

National Institute of Justice, *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach,* August of 2017

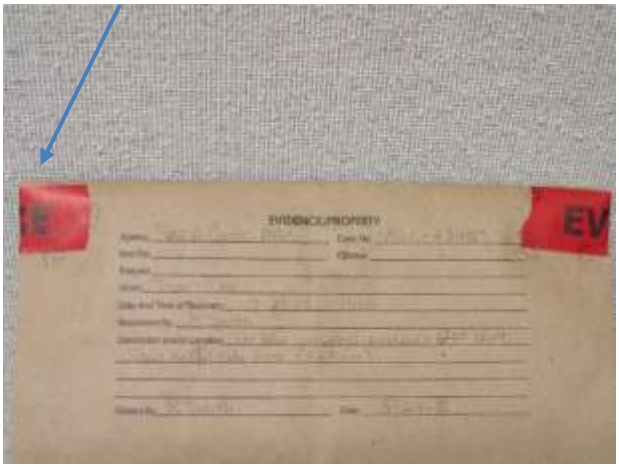
APPENDIX IV



Note the wrap around taping and the arrow tip is indicating there is not a gap large enough to allow the flap to be opened or have an item inserted

Note the initials at all junctures

APPENDIX V



Note the wrap around taping and the arrow tip is indicating there is not a gap large enough to allow the flap to be opened or have an item inserted

Note the initials at all junctures

APPENDIX VI

Title XLVII **Chapter 943**
CRIMINAL PROCEDURE AND CORRECTIONS **DEPARTMENT OF LAW ENFORCEMENT**

943.326 DNA evidence collected in sexual offense investigations.—

(1) A sexual offense evidence kit, or other DNA evidence if a kit is not collected, must be submitted to a member of the statewide criminal analysis laboratory system under s. 943.32 for forensic testing within 30 days after:
(a) Receipt of the evidence by a law enforcement agency if a report of the sexual offense is made to the law enforcement agency; or
(b) A request to have the evidence tested is made to the medical provider or the law enforcement agency by:
1. The alleged victim;
2. The alleged victim's parent, guardian, or legal representative, if the alleged victim is a minor; or
3. The alleged victim's personal representative, if the alleged victim is deceased.
(2) An alleged victim or, if applicable, the person representing the alleged victim under subparagraph (1)(b)2. or 3. must be informed of the purpose of submitting evidence for testing and the right to request testing under subsection (1) by:
(a) A medical provider conducting a forensic physical examination for purposes of a sexual offense evidence kit; or
(b) A law enforcement agency that collects other DNA evidence associated with the sexual offense if a kit is not collected under paragraph (a).
(3) A collected sexual offense evidence kit must be retained in a secure, environmentally safe manner until the prosecuting agency has approved its destruction.
(4) By January 1, 2017, the department and each laboratory within the statewide criminal analysis laboratory system, in coordination with the Florida Council Against Sexual Violence, shall adopt and disseminate guidelines and procedures for the collection, submission, and testing of DNA evidence that is obtained in connection with an alleged sexual offense. The timely submission and testing of sexual offense evidence kits is a core public safety issue. Testing of sexual offense evidence kits must be completed no later than 120 days after submission to a member of the statewide criminal analysis laboratory system.
(a) The guidelines and procedures must include the requirements of this section, standards for how evidence is to be packaged for submission, what evidence must be submitted to a member of the statewide criminal analysis laboratory system, and timeframes for when the evidence must be submitted, analyzed, and compared to DNA databases.
(b) The testing requirements of this section are satisfied when a member of the statewide criminal analysis laboratory system tests the contents of the sexual offense evidence kit in an attempt to identify the foreign DNA attributable to a suspect. If a sexual offense evidence kit is not collected, the laboratory may receive and examine other items directly related to the crime scene, such as clothing or bedding or personal items left behind by the suspect. If probative information is obtained from the testing of the sexual offense evidence kit, the examination of other evidence should be based on the potential evidentiary value to the case and determined through cooperation among the investigating agency, the laboratory, and the prosecutor.
(5) A violation of this section does not create:
(a) A cause of action or a right to challenge the admission of evidence.
(b) A cause of action for damages or any other relief.
History.—s. 1, ch. 2016-72.

REFERENCES

1. Florida Department of Law Enforcement, *Crime Laboratory Evidence Submission Manual,* 2017
2. National Institute of Justice, *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach,* August of 2017
3. Office of the Attorney General, State of Florida. *Adult and Child Sexual Assault Protocols: Initial Forensic Physical Examination*, April 2015
4. *The Biological Evidence Preservation Handbook: Best Practices for Evidence Handlers*, April 2013. Accessed, April 4, 2018 at www.nist.gov/forensics/upload/NIST-IR-7928.pdf
5. U.S. Department of Justice Office on Violence Against Women, *A National Protocol for Sexual Assault Medical Forensic Examinations Adults/Adolescents*, Second Edition; April 2013

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