

## **Sexual Assault Forensic Examiners (SAFE) DNA Evidence Collection**

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### **DNA Evidence Collection**

The following information may enhance the efficacy of the evidence collected by sexual assault examiners. Using today's DNA identification technology, an individual may be identified with virtual certainty. Of course, as with any scientific method, there may be circumstances that only permit a less precise association. For example, when an evidence stain is degraded or very limited in size, a full analysis may not be able to be performed. This rarely occurs now, because only a trace amount of biological material is required for laboratory analysis that can result in a DNA profile. For example, DNA identification profiles are routinely detectable from saliva recovered from a cigarette butt or a bite mark, or from the cellular material adhering to the root portion of a single hair. A suspect's DNA profile may be determined from blood, semen, saliva, hair, or other body tissue that may be recovered in connection with a criminal incident. In cases involving sexual assault, these kinds of evidentiary material are typically recovered from the body and clothing of the victim.

The DNA profile may be used to identify the perpetrator of the crime, to show evidence of intimate contact between the perpetrator and the victim, or to link crimes that have been committed by the same individual. The technology has been used to clear innocent suspects and to exonerate persons wrongfully convicted of crimes.

All states, including New York, have passed DNA database legislation in recognition of the enormous potential of forensic DNA technology to solve crimes more quickly and to identify the perpetrators of crimes with greater certainty. DNA profiles are obtained not only from designated convicted felons, but from physical evidence recovered from the victim (body and clothing), or at scenes of crimes - presumably from the perpetrator of the crime. DNA profiles are entered into the state data bank, and routinely uploaded to the national data bank. Used effectively, the data banks have the potential to substantially reduce the total hours spent by investigators in eliminating suspects and identifying the offender - especially in cases involving sexual assault. For personal privacy considerations, it is mandated that DNA specimens taken from an offender, and the resulting DNA identification profile, may only be used for identification purposes in connection with a criminal investigation.

The efforts of specially trained sexual assault forensic examiners will assist in ensuring the proper collection and preservation of DNA evidence and increase the likelihood that the perpetrator of a sexual assault will be identified.

### **Sexual Offense Evidence Collection Kit**

The New York State Department of Health, in conjunction with the New York State Division of Criminal Justice Services (DCJS) and crime labs in New York State, developed a sexual offense evidence collection kit for the collection and preservation of sexual assault forensic evidence. While most materials/supplies used in collection of forensic evidence are routinely found in

hospital emergency departments, the use of a standardized kit provides the following benefits:

- Standardization of evidence collection procedures across the state.
- At the time of crisis/need, everything needed to perform the exam is in the box.
- Knowledge is current and applicable to any hospital in New York State.
- Standardization of procedures and materials in evidence collection yields better outcomes for survivors in court.

Although the completion of each appropriate step in the kit is requested, it is acknowledged that the examiner may elect not to complete one or more steps, based upon consideration of the physical and/or emotional well-being, and preference, of the patient.

It must be acknowledged that a patient has the right to refuse one or more of the individual steps without relinquishing the right to have evidence collected.

Kits are provided by DCJS at no cost to hospitals in the state. To order sexual offense evidence collection kits and Drug Facilitated Sexual Assault (DFSA) kits, send an order form or any questions to the following e-mail address - [dcjsvawa@dcjs.ny.gov](mailto:dcjsvawa@dcjs.ny.gov). Download the order form by going to [www.criminaljustice.ny.gov/ofpa/evidencekit.htm](http://www.criminaljustice.ny.gov/ofpa/evidencekit.htm). The standard sexual offense evidence collections kits contain 12 kits per case and DFSA kits contain 6 kits per case. You can also contact DCJS directly at 518-457-9726.

#### General Guidelines

If the assault occurred within 96 hours, an evidence collection kit is used. If it is determined that the assault took place more than 96 hours prior to the examination, the use of an evidence collection kit is generally not necessary.

The evidence collection kit contains self-sealing envelopes for storing all samples. If it is necessary to use other than self-sealing envelopes, do not lick the envelopes. It is important to ensure that each envelope used contains all the requested items and information. Envelopes that are not used should be marked “no” on the line which asks, “was sample collected?” All sample swabs and smears must be dry before repackaging. They can be air dried at room temperature, or to expedite the drying process, electric swab dryers are available.

Each item of clothing must be allowed to air dry if damp and placed in a separate paper bag. Additionally, there may be clothing evidence that is too large to be placed in the kit. That evidence also must be properly collected, placed in large paper bags, and properly stored, while maintaining the chain of custody.

See the ‘Sexual Offense Evidence Collection Kit Instruction Sheets’, ‘Patient Information Form’, ‘Medical Record Sexual Assault Form’, sample envelope covers, sample box cover and a list of items to be included in a sexual offense evidence collection kit. The evidence collection instructions that follow are derived from those sheets.

**Note:** Blood is no longer drawn for evidentiary purposes. However, it is essential to draw blood immediately to allow timely baseline HIV testing (when the patient is eligible for prophylaxis) and serum blood testing for pregnancy (if serum testing is preferred to urine testing) and testing for hepatitis B and C. Blood needed for any other health care diagnostic test should be obtained at this time. The patient should be offered HIV testing. The seven key facts regarding HIV testing should be shared with the patient before obtaining informed consent. Information about these seven key facts can be found at:

[www.health.ny.gov/diseases/aids/providers/forms/docs/key\\_facts\\_before\\_testing.pdf](http://www.health.ny.gov/diseases/aids/providers/forms/docs/key_facts_before_testing.pdf)

Consent may be oral if a rapid test is used. If a standard Elisa is used, written consent is obtained. If the patient does not consent to HIV antibody testing, the specimen must be discarded. It is important that the patient not be subjected to more than one venipuncture when possible. Collect blood specimens prior to beginning Step 1 of evidence collection.

Each step in this kit is designed for one of two purposes. The first is to recover potentially valuable physical evidence that will be useful in any subsequent investigation and legal proceeding to identify the perpetrator of the reported assault (through forensic DNA analysis, for instance) and/or to verify the nature and circumstances of the reported assault. The type of evidence often detected includes saliva, semen, hairs, spermatozoa, blood, fibers, plant material, soil and other debris that may have been transferred from the perpetrator's clothing or personal effects, or from the scene of the reported assault. The other steps are intended to collect evidence that will be used as a reference standard (controls from the victim). Each step is noted as either "*Evidence Collection*" or "*Control Sample*".

The kit contains material sufficient for the collection of evidence from one person. Use a separate kit for each person. Change gloves for each step.

## Step 1: Evidence Collection

### ➤ Oral Swabs and Smears

The swabs are not moistened prior to the sample collection. Smears are not stained or chemically fixed. All items are removed from the envelope. Two swabs are used simultaneously to swab the patient's mouth and gum pockets. Both swabs are used to prepare one smear. The swabs and smear are allowed to air dry. When the slide is dry, write Oral on the slide and place in the slide mailer marked Oral. Tape closed on one side only and complete the label on the mailer. The swabs are placed in the swab box marked "Oral." Both the mailer and the swab box are returned to the envelope. The envelope is sealed, and the information requested is completed.

This test is done after obtaining patient consent and often before the medical interview and physical examination. The patient can then rinse their mouth, receive timely treatment and prophylaxis and participate in the medical interview with no danger of losing oral evidence.

### **Rationale/Discussion Steps 1, 12, 13, 14 and 15.**

#### **Swabs and Smears**

The purpose of obtaining swabs and smears is to allow a forensic analyst to test for DNA evidence or microscopically for the presence of spermatozoa. If no spermatozoa are present, the analyst will then use the swabs to identify the seminal plasma components to confirm the presence of semen.

Depending on the nature of the assault, semen may be detected on the clothing or skin, or in the mouth, vagina, or rectum. Embarrassment, fear, trauma, or lack of understanding of the nature of the assault may cause a patient to be vague or mistaken about the type of sexual contact that occurred. For this reason, and because there can be leakage of semen from the vagina or penis onto the anus, it is recommended that patients be encouraged to allow examination of and specimen collection from all three orifices.

In cases where a patient insists that contact or penetration involved only one or two orifices (or in some circumstances, no orifices at all), it is important for the patient to be able to refuse these tests. This right of refusal also serves to reinforce a primary therapeutic principle - that of returning control to the victim.

#### **Spermatozoa and Semen**

Historically, health care and law enforcement personnel have placed significant emphasis on the presence of spermatozoa in or on the body or clothing of a sexual assault victim as the most positive indicator of sexual assault. Conversely, when no spermatozoa were found, a shadow of doubt was sometimes cast upon the patient's report of sexual assault, contributing to the misconception that the absence of spermatozoa meant that no sexual assault occurred.

Many sexual assault offenders are sexually dysfunctional and do not ejaculate during the assault.

Additionally, offenders may have had a vasectomy, may have used a condom, may have a low sperm count, or may ejaculate somewhere other than in an orifice or on the patient's clothing or body, or may not ejaculate at all if the assault is interrupted. Therefore, a lack of spermatozoa does not prove that an assault did not occur.

Similarly, the lack of semen may mean only that no ejaculation occurred, or that various other factors contributed to its absence in detectable amounts in the specimen. For example, the assailant may have used a condom; there may have been a significant time delay between the assault and the collection of specimens; penetration of the patient may have been made by an inanimate object; the patient may have inadvertently cleaned or washed away the semen; or, the specimen may have been improperly collected.

Therefore, although the finding of semen, with or without the presence of spermatozoa, may indicate that sexual contact did take place, its absence does not preclude the possibility of sexual contact.

The finding of spermatozoa is useful for two reasons. It is a positive indication that ejaculation occurred, and semen is present. Additionally, the presence of spermatozoa allows for the genetic (DNA) profile of the donor of the semen. This profile may also be determined from the cellular material remaining on the swab.

Forensic scientists are also interested in the presence of seminal plasma because it can identify semen in the absence of spermatozoa.

## Step 2: Control Sample

### ➤ **Buccal Specimen for Patient DNA Sample**

Instruct the patient to rinse the inside of their mouth by vigorously swishing with water. Using the special swab from the envelope marked "Buccal Specimen," collect a specimen by swabbing with a scrubbing motion between the cheek and the gums on both sides of the mouth. To assure a sufficient sample, the swab should be applied in a scrubbing motion for 15 to 20 times. The swabs are allowed to air dry. When dry, the swabs are placed in the box provided. The swab box is returned to the envelope. The envelope is sealed, and all of the information requested is filled out.

### ***Rationale/Discussion Step 2.***

Buccal swabs, in lieu of an intravenous blood draw, are less intrusive, less expensive, do not require refrigeration or other special handling, are not subject to possible spillage or breakage (as might a glass tube), and are safer (in terms of pathogenic exposure) to handle than whole blood.

## Step 3: Evidence Collection

➤ **Trace Evidence**

To minimize the loss of evidence, lay a sheet of white paper (use exam table paper) on the floor then lay another piece of exam table paper on top of that. Preferably, in

the presence of the examiner, the patient disrobes over the white paper, handing the examiner each piece of clothing as it is removed. This allows trace evidence to collect on the paper. Fill out the requested information on the envelope and then carefully fold the top paper and, place it in the envelope and seal.

#### Step 4: Evidence Collection

➤ **Clothing**

The examiner should determine whether the patient is wearing the same clothing worn during or immediately following the assault. If the victim has changed clothes after the assault, it is recommended that an investigator go to the victim's residence to obtain clothing worn at the time of the assault. The victim may also be asked to bring the clothing to the investigator at the police station. Clothing should be examined for any apparent foreign material, stains, or damage. An ultraviolet light source, which causes semen and other substances to become fluorescent when illuminated (Wood's lamp), can be used to detect stains on clothing. With patient consent, all items that may contain possible evidence related to the assault should be collected. Additionally, it may be helpful to save any clothing that may corroborate the patient's account of the assault. This may be useful if the matter is later pursued in the legal system.

Clothing is not shaken, as microscopic evidence may be lost.

Any wet stains, such as blood or semen, should be allowed to air dry before clothing is placed into a paper bag. It is preferable that each piece of clothing be folded inward, placing a piece of paper against any stain, so that the stain is not in contact with the bag or other parts of the clothing.

After air drying all items, place each item in a separate bag. Hosiery, slips, and bras should be put into small individual paper bags. When items such as slacks, dresses, blouses, or shirts are to be retained as part of evidence collection, each should be put individually into larger paper bags. Label the bags with the victim's name and type of item; then tape the bag shut.

If, after air drying as much as possible, moisture is still present on the clothing and might leak through the paper bag during transfer or storage, the labeled and sealed clothing bags should be placed inside a larger plastic bag with the **top of the plastic bag left open**. A label should be affixed to the outside of the plastic bag, which indicates that wet evidence is present. This will enable the laboratory to remove the clothing promptly to avoid loss of evidence due to putrefaction. Not more than one wet piece of evidence should be placed in each plastic bag (to prevent cross contamination). Bags/containers are labeled and numbered (i.e., 1 of 3; 2 of 3; etc.) to ensure that all items of evidence are transferred to the crime laboratory with the kit. The

number of additional containers collected is indicated on the outside of the kit.

The hospital or exam site should arrange to have appropriate clothing and shoes available. **No patient should ever leave the examination site in an examining gown.**

#### ***Rationale/Discussion Step 4***

Frequently, clothing contains the most important evidence in a case of sexual assault. The reasons are twofold:

- Clothing provides a surface upon which traces of foreign matter may be found, such as the assailant's semen, saliva, blood, hairs, and fibers, as well as debris from the crime scene. While foreign matter can be washed off or worn off the body of the patient, the same substances can often be found intact on clothing for a considerable length of time following the assault.
- Damaged or torn clothing may be significant. It may be evidence of force and can also provide laboratory standards for comparing trace evidence with evidence collected from the suspect and/or crime scene.

### **Step 5: Evidence Collection**

#### ➤ **Underwear**

Wet or damp underwear should be air dried before packaging. The patient's underwear should be collected regardless of whether it was worn at the time of the assault. Fill out all information requested on the envelope; place underwear into the envelope and seal.

### **Step 6: Evidence Collection**

#### ➤ **Debris Collection**

The patient's body is examined carefully for any foreign material (e.g., leaves, fibers, glass, hair, etc.). Remove and unfold the bindle (paper towel) from the envelope marked Debris Collection. Any foreign material found on the patient's body is placed in the center of the bindle. The bindle is refolded in a manner to retain the debris and is returned to the envelope. The information requested on the envelope is completed and the envelope is sealed.

### **Step 7: Evidence Collection**

#### ➤ **Dried Secretions and/or Bite Marks**

An ultraviolet light (Wood's lamp) is used to identify areas of dried secretions on the patient's body. When dried secretion stains and/or bite marks are found, two swabs are used to collect the specimen. The swabs are moistened with 1-2 drops of water.

Both swabs are held together to swab the area of the stain. It is important that the examiner use two new swabs for each different location on the body. Two complete sets of swabs and boxes are provided. If necessary, additional swabs should be obtained from the hospital's supply of standard sterile swabs. The swabs are allowed to air dry. When dry, they are placed in the swab box marked "Dried Secretions and/or Bite Marks," labeled with the site where collected on the body, and the nature of the secretion (if known), and replaced in the envelope. If additional swabs were used place them in a plain white stationary envelope and seal but do not lick the envelope. The information requested is filled in on the envelope and it is sealed.

#### ***Rationale/Discussion Step 7.***

Semen and blood are the most common secretions deposited on the patient by the assailant. There are also other secretions (e.g., saliva) which can be analyzed by laboratories to aid in the identification of the perpetrator.

#### ➤ **Matted Material in Hair**

Where there is evidence of semen or other matted material on pubic or head hair, it may be collected in the same manner as other dried secretions (see Step 7). The swab is then placed in a small paper envelope and labeled "possible secretion sample from head (or pubic) hair". Although the specimen can be collected by cutting off the matted material, it is important to obtain the patient's permission prior to cutting hair.

### **Step 8: Evidence Collection**

#### ➤ **Fingernail Scrapings**

It is important to collect evidence from each hand separately. Remove both bindles (paper towels) and scrapers from the envelope. Mark one bindle, Left, and one bindle, Right. One bindle is unfolded and placed on a flat surface. Use the scraper in the kit (an orange wood stick or cuticle stick will also work) to scrape under each nail. Each finger is held over the bindle when scraping, so that any debris present will fall onto the towel. After all fingers on one hand are done, the scraper is placed in the center of the towel. The towel is refolded to retain the debris and the scraper. Repeat steps for other hand. Both bindles are returned to the envelope. The information requested on the envelope is completed and the envelope is sealed.

#### **Rationale/Discussion Step 8**

During an assault, the victim will be in contact with the environment and the assailant. Trace materials, such as skin, blood, hairs, soil, and fibers can collect under the fingernails of the victim and may provide useful evidence.

### **Step 9: Control Sample**

#### ➤ **Pulled Head Hairs**

Pulled hair standards for evidence collection are considered by many to be very traumatic to the



victims of sexual assault. The examiner must use professional judgment regarding whether to complete this step or not, based upon the physical and/or emotional well-being and preference of the victim. Hairs can be pulled at a later date, if needed. The victim should be aware that hair collected at a later date may not be as conclusive as if it were collected at the time of the initial exam. Give victim the option of collecting the sample themselves.

Remove paper bindle from envelope. Using thumb and forefinger, not forceps, PULL, **do not cut**, 5 hairs from each of the following scalp locations (for a total of 25 hairs): center, front, back, left side, right side. Place pulled hair in center of bindle and refold bindle. Fill out all information requested on the envelope; replace bindle into envelope and seal.

### Step 10: Evidence Collection

#### ➤ **Pubic Hair Combing**

A bindle (paper towel) is placed underneath the patient's pubic hair area. Using the comb provided, the pubic hair is combed in downward strokes, so that any loose hairs or debris will fall onto the bindle. The patient should always be given the option of combing their own pubic hair. The bindle is carefully removed, and the comb is placed in the center. The towel is refolded in a manner to retain the comb and any evidence present. The bindle is returned to the envelope. Fill out information requested on envelope; replace bindle into envelope and seal.

### Step 11: Control Sample

#### ➤ **Pulled Pubic Hairs**

It is recommended that pubic hair standards **not** be pulled during the initial medical exam. They can be pulled at a later date (if the prosecution requests these samples and the victim consents to the procedure). When the specimen is obtained, fifteen full-length hairs are pulled from various areas of the pubic region (using the gloved thumb and the forefinger - not forceps). When possible, it is advisable to offer the patient the opportunity to pull their own hairs. They are placed in the envelope. The envelope is sealed, and the information requested is completed.

#### ➤ **External Genital Exam**

It is important for the examiner to complete a visual examination (including the use of magnification of the external genitalia). The examiner should identify trauma (e.g., laceration or contusion at the posterior fourchette) and document any trauma both by written documentation and forensic photography.

### Step 12: Evidence Collection

#### ➤ **Perianal and Anal Swabs and Smear**

Smears are not stained or chemically fixed. All items are removed from the envelope. Two swabs

may be lightly moistened with 1-2 drops of water. Perianal swabs should be taken (even without history of anal contact), as secretions may pool in this area. If both perianal and anal swabs are collected, it is preferable to make the slide from the anal swab.

- If only perianal swabs are to be collected, proceed as follows: Using two swabs simultaneously, moisten if necessary with 1 or 2 drops of water, and with a rolling motion carefully swab the perianal area. Using both swabs, prepare one smear on the slide provided and allow to air dry (*smear should be confined to the circle area on the slide*). **DO NOT DISCARD EITHER SWAB.** When slide is dry, place in the slide mailer marked “Perianal/Anal.” Tape closed on one side only and fill out the label on mailer indicating perianal area. Allow both swabs to air dry. When swabs are dry, place in swab box marked “Perianal.”
- If both perianal and anal swabs are to be collected, proceed as follows: Using two swabs simultaneously, moisten with 1 or 2 drops of water if necessary and with a rolling motion carefully swab the perianal area. Allow to air dry. Using two additional swabs simultaneously, gently swab the anal canal. Using both swabs, prepare one smear on slide provided and allow to air dry (*smear should be confined to the circle area on the slide*). **DO NOT DISCARD ANY SWABS.** When slide is dry, place in the slide mailer marked “Perianal/Anal.” Tape closed on one side only and fill out label on mailer indicating anal area. When swabs are dry place in appropriate swab boxes marked “Perianal” and “Anal” respectively.
- If a patient has been rectally traumatized, an examination with an anoscope and colposcope may be necessary. It is important for the examiner to rule out rectal trauma requiring further medical or surgical evaluation.

### ***Rationale/Discussion Step 12.***

It is recommended that anal evidence be collected before conducting the vaginal examination and evidence collection. In this way, contamination of the anal site and possible destruction of dried secretions by the examiner may be avoided.

## **Step 13: Evidence Collection**

### ➤ **Vulvar/Penile Swabs and Smears**

All items should be removed from the envelope. The swabs are moistened with one to two drops of water. Using both swabs simultaneously, with a rolling motion carefully swab the external genitalia, including along the folds between the labia majora and labia minora in the female patient. For male patients, swab the penis and scrotum. Prepare one smear on the slide provided and allow to air dry. Do not discard either swab, allow both to air dry. When dry, the swabs are placed in the box marked “Vulvar/Penile”. When the slide is dry, it is placed in the slide mailer marked “Vulvar/Penile” and taped closed, on one side only. The label on the mailer is filled out. The mailer and the swab box are replaced in the envelope and sealed. All requested information on the envelope should be filled out, including possible type of secretion.

## Step 14: Evidence Collection

### ➤ Vaginal Swabs and Smear

Note: Do not stain or chemically fix smear. Do not moisten swabs prior to sample collection. Take special care not to contaminate the patient's vaginal area with any debris from the anal area.

Remove all items from envelope. Using two swabs simultaneously, carefully swab the vaginal vault. Allow both swabs to air dry. When dry, place in swab box marked "Vaginal."

Using two additional swabs, repeat the swabbing procedure of the vaginal vault. Prepare one smear on the slide provided and allow to AIR DRY. (*Smear should be confined to the circle area on the slide.*) **DO NOT DISCARD ANY SWABS.** When slide is dry, place in the slide mailer marked "vaginal." Tape closed on one side only and fill out label on mailer. When second set of swabs are dry place in second swab box marked "Vaginal." (**If a speculum is used for this step, do not remove until next step (step 15) is completed.**) Fill out all information on envelope; replace swab boxes and slide mailer into envelope and seal.

After the collection of vaginal specimens, and the completion of any photo-documentation, it is important for the examiner to complete a bimanual exam to assess for cervical motion tenderness. If the patient has cervical motion tenderness, uterine, or adnexal tenderness, further medical assessment may be required.

## Step 15: Evidence Collection

### ➤ Cervical Swabs and Smear

This step is particularly important if more than 12 hours have passed since the assault. Do not moisten swabs prior to sample collection. **DO NOT COLLECT ON PREPUBERTAL CHILDREN.**

Remove all items from envelope. Using two swabs simultaneously, carefully swab the cervix and cervical os. Allow both swabs to air dry. When dry, place in swab box marked "Cervical." Using two additional swabs, repeat the swabbing procedure of the cervix and os. Prepare one smear on the slide provided and allow to air dry. (*Smear should be confined to the circle area on the slide.*) **DO NOT DISCARD ANY SWABS.** When the slide is dry, place in the slide mailer marked "Cervical." Tape closed on one side only and fill out label on mailer. When swabs are dry, place in swab box marked "Cervical." Fill out all information on envelope; replace swab boxes and slide mailer into envelope and seal.

## Additional Information

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### **What to do when the medical evidentiary exam has been completed:**

- Make sure each envelope used contains all requested items and information.
- Envelopes which were NOT used should bear a mark in the “NO” box next to the “Was sample collected?” line.
- Remove the Police Evidence Seal from the box. Return all evidence envelopes and instruction sheet to the kit box. All required information, including the number of additional bags and containers, should then be filled out on the top of the kit just prior to affixing the evidence seal.
- If photographs were taken, do not include them in the kit. Include photos in the patient’s medical record, or release to investigating officer as determined by your institution’s policy.
- Do not include blood or urine in this kit.
- Sign the Police Evidence Seal and use it to seal the box. Signature must be partly on seal and partly on box.
- Fill out information requested on top of box in space provided for Hospital Personnel.
- Give sealed kit and clothing bags to the investigating officer. If officer is not present, place sealed kit in a secure refrigerated area, in accordance with established protocol. Just as it is the responsibility of each facility to properly collect evidence in sexual assault cases, it is also their responsibility to ensure that evidence is properly maintained, and the chain of custody is documented. New York State Public Health Law 2805-i requires that evidence be secured for twenty years.
- Diagnostic specimens collected for non-evidentiary purposes should not be included in the kit. Placement of these specimens in the kit could delay or prevent diagnostic testing and/or treatment.

### **DO NOT INCLUDE IN THE KIT:**

- Patient Photographs
- Blood or Urine Samples
- Forms included in the kit for your convenience including: ‘Sample Diagrams for Male and Female Patients’, ‘Patient Information form and Medical Record Sexual Assault form’ and ‘Authorization for Release of Information and Evidence to Law Enforcement Agency’. Follow the instructions on the forms to determine their distribution.

### **Procedures for Release of Evidence**

If the patient has consented, the sealed kit and clothing bags must be given to the investigating officer. If the officer is not present, or the patient has not given permission for the kit to be released, the sealed kit is placed in a secure area, in accordance with established protocol. The evidence must be kept refrigerated and secured for at least twenty years.

### **Non-Authorization of Release**

Patients may choose not to authorize release of evidence at the time of examination. Public Health Law 2805-i(2) provides that hospitals must maintain sexual offense evidence in a locked

separate and secure refrigerated area, and the chain of custody, for not less than twenty years unless the patient directs the hospital to surrender it to the police, or for certain kinds of evidence, if the police request its surrender. Examiners must inform patients of the length of time evidence will be held prior to disposal, and should give patients the option of providing contact information for purposes of receiving notice of the planned disposal of the evidence after the expiration of the twenty-year period. Both the Sexual Offense Evidence Collection kit and the Drug Facilitated Sexual Assault (DFSA) kit should be kept in a locked refrigerator if not immediately released to law enforcement.

### **Release of Evidence**

Evidence may not be released from a hospital without the written authorization and consent of the informed adult patient, or an authorized third party, if the patient is unable to understand or execute the release. An Authorization for Release of Information and Evidence form must be completed. In addition to obtaining the signature of the patient or authorized third party on this form, signatures must be obtained from the examiner or hospital representative turning over the evidence, and the law enforcement representative who picks up the evidence. The original copy of the release form should be kept in the medical record, and a copy given to the law enforcement representative.

The patient should also be made aware of the State DNA Databank and the potential to identify the assailant, or if the assailant is already known, to link the assailant to evidence recovered from the victims of other sexual assaults. While the patient may be reluctant to proceed with criminal charges based solely on the assault, linkages with DNA evidence recovered from victims of other assaults determined from an analysis of DNA evidence in the case could provide important leads to investigators and, ultimately, result in the resolution of those cases in addition to the victim's own case.

### **Transportation of Evidence**

Under no circumstances should a patient, family member, or support person (e.g., advocate) be allowed to handle or transport evidence after it has been collected. Only a law enforcement official or duly authorized agent should transfer physical evidence from the examination site to a crime laboratory.

### **Public Health Law 2805-i (amended April 12, 2018)**

In 2018, Public Health Law 2805-i was amended to effectuate the following:

- Extend the length of time sexual offense evidence collection kits are preserved from thirty days to twenty years. Hospitals are responsible for storing all evidence collected or in hospital storage as of April 12, 2018. Hospitals may enter into contracts with other entities that will ensure appropriate storage of evidence.
- Provide that Department of Health (DOH), Office of Victim Services (OVS), Division of Criminal Justice Services (DCJS), and State Police are required to conduct a study and make recommendations on a long-term storage location; a schedule for hospitals to transfer evidence; and an option for tracking, monitoring, and notification. **By April 1, 2021** the responsibility for storage of evidence will be transferred from hospitals to: a

state-owned or operated facility; facility owned or operated by a local government or law enforcement agency; or a facility owned or operated by a private entity.

- Require that the survivor be notified at least ninety days before evidence is destroyed.
- Provide that, to prohibit hospitals from billing sexual assault survivors for a sexual assault forensic exam, hospitals must notify sexual assault survivors orally and in writing of the option to decline to provide private health insurance information and to have the Office of Victim Services pay for the exam.

Public Health Law 2805-i also requires every hospital providing treatment to alleged victims of a sexual offense to:

- Maintain sexual offense evidence and the chain of custody.
- Contact a rape crisis or victim assistance organization.
- Offer and make available appropriate HIV post-exposure treatment therapies.

Public Health Law 2805-p requires every hospital providing emergency treatment to a rape survivor to promptly:

- Provide written information relating to emergency contraception.
- Orally inform of the availability of emergency contraception and its use and efficacy.
- Provide emergency contraception, unless contraindicated, upon the rape survivor's request.