

5. Timing Considerations for Collecting Evidence

Recommendations at a glance for health care providers and other responders to maximize evidence collection:

- Whether or not evidence is collected for the sexual assault evidence collection kit, examiners should obtain the medical forensic history, examine patients, and document findings (with patients' consent). Patients' demeanor and statements related to the assault should also be documented.
- Examine patients promptly to minimize loss of evidence and identify medical needs and concerns.
- Make decisions about whether to collect evidence and what to collect on a case-by-case basis, guided by knowledge that outside time limits for obtaining evidence vary.
- Responders should seek education and resources to aid them in making well-informed decisions about evidence collection.

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

Examine patients promptly to minimize the loss of evidence. Evidence can be lost from the body and clothing through a number of mechanisms. For example, degradation of some seminal fluid components can occur within body orifices, semen can drain from the vagina or wash from the mouth, sperm can lose motility, bodily fluids can get washed away, and dried secretions and foreign materials can fall from the body and clothing.¹⁴⁴ Prompt examination also helps to quickly identify patients' medical needs and concerns.

Recognize that evidence may be available beyond 72 hours after the assault. In recent history, 72 hours after a sexual assault has been considered a guideline to use as an outside limit for obtaining evidence for the evidence collection kit. Research and evidence analyses indicate that some evidence may be available beyond this time period. For instance, sperm might be found inside the cervix after 72 hours and urine may reveal traces of certain drugs up to 96 hours after ingestion. Some examples of situations where evidence may be found even after considerable periods of time include when patients complain of pain or bleeding, have visible injuries, or have not washed themselves since the assault, or where there is a history of significant trauma from the assault. Some jurisdictions have extended their standard cutoff time beyond 72 hours (e.g., to 5 days or 1 week).

Due to the stability of DNA and sensitivity of tests, advancing DNA technologies also continue to extend time limits. These technologies are even enabling forensic scientists to analyze stored evidence from crimes that occurred years before.¹⁴⁵ Such breakthroughs demonstrate the importance of collecting all possible evidence.

Make decisions about whether to collect evidence on a case-by-case basis, guided by the knowledge that outside time limits for obtaining evidence vary due to factors such as the location of the evidence or type of sample collected. Examiners and law enforcement representatives, in particular, should be aware of the standard cutoff time for evidence collection in their jurisdictions, which is typically indicated in instructions in evidence collection kits. But it is important to remember that evidence collection beyond the cutoff point is conceivable and may be warranted in particular cases. In any case where the utility

Child Sexual Abuse Victims, 2001, p. 29.

¹⁴⁵ When the evidence was initially collected after the assault, it was not of adequate quality to allow crime lab analysis using existing technologies.

of evidence collection is in question, encourage dialogue between law enforcement representatives (if involved), examiners, and forensic scientists regarding potential benefits or limitations.

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

Responders should seek education and resources to aid them in making well-informed decisions about evidence collection. Examiners and law enforcement representatives require training and resources to allow them to make informed decisions about whether to collect evidence and what to collect in each case. They also need local policies and kit instructions that encourage them to make informed decisions in each case, rather than applying a limiting general standard to all.¹⁴⁶ First responders also need instructions on collecting a urine sample if there is any suspicion of drug-facilitated sexual assault and victims cannot wait to urinate until their arrival at the exam site.

¹⁴⁶ For many communities, moving away from the 72-hour cutoff time represents a major shift in policy. Training and policies should discourage decision making about evidence collection that is based on extraneous factors, such as reluctance of a criminal justice agency to pay for sexual assault evidence collection in general.