

PRESERVATION OF EVIDENCE

In the immediate aftermath of a sexual assault, the most important thing is for the victim to get to a safe place. Whether it be the victim's home, a friend's home or with a family member, immediate safety is what matters most. When a feeling of safety has been achieved, it is vital for the victim to receive medical attention, and strongly recommended for the victim to receive a forensic examination.

Preserving DNA evidence can be key to identifying the perpetrator in a sexual assault case, especially those in which the offender is a stranger. DNA evidence is an integral part of a law enforcement investigation that can build a strong case to show that a sexual assault occurred and to show that the defendant is the source of biological material left on the victim's body.

Victims should make every effort to save anything that might contain the perpetrator's DNA, therefore a victim should not:

- Bathe or shower
- Use the restroom
- Change clothes
- Comb hair
- Clean up the crime scene
- Move anything the offender may have touched

Even if the victim has not yet decided to report the crime, receiving a forensic medical exam and keeping the evidence safe from damage will improve the chances that the police can access and test the stored evidence at a later date.

What does a forensic medical exam entail?

A forensic medical exam may be performed at a hospital or other healthcare facility, by a sexual assault nurse examiner (SANE), sexual assault forensic examiner (SAFE) or another medical professional. This exam is complex and on average, takes 3-4 hours. Although this may seem time-consuming, medical and forensic exams are comprehensive because the victim deserves and needs special attention to ensure that they are medically safe and protected. It is important to collect evidence so that if the victim chooses to report the crime to the police, they can access the stored evidence.

1. To start, the medical professional will write down the victim's detailed history.
 - This sets a clear picture of existing health status, including medications being taken and preexisting conditions unrelated to the assault.
2. Next there is a head-to-toe, detailed examination and assessment of the entire body (including an internal examination).

- This may include collection of blood, urine, hair and other body secretion samples, photo documentation of injuries (such as bruises, cuts and scraped skin), collection of clothing (especially undergarments).
3. Finally, the medical professional will speak about treatment for sexually transmitted infections (STIs) that may have been exposed during the assault.
- Depending on the hospital and state, the victim may receive prophylaxis as well as referrals for follow-up counseling, community resources and medical care.

NOTE: The victim has the right to accept or decline any or all parts of the exam. However, it is important to remember that critical evidence may be missed if not collected or analyzed.

After the forensic medical exam is performed and the evidence is collected and stored in the kit, the victim will be able to take a shower, brush their teeth, etc. — all while knowing that the evidence has been preserved to aid in a criminal prosecution if so desired.

What is a "rape kit?"

The sexual assault forensic exam kit (commonly referred to as a “rape kit”) is the collection of DNA and other forensic evidence, which is then kept by the SANE or medical provider until picked up by law enforcement or the crime lab. It is then stored until the victim determines whether to pursue a case. The kit itself is generally a large envelope or cardboard box, which can safely store evidence collected from your body or clothing. Although the contents of a sexual assault forensic exam may vary by state and jurisdiction, it may include items, such as:

- Instructions
- Bags and sheets for evidence collection
- Swabs
- Comb
- Envelopes for hair and fibers
- Blood collection devices
- Documentation forms

Under the *Violence Against Women and Department of Justice Reauthorization Act of 2005*, states may not:

require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursement for charges incurred on account of such an exam, or both.

Under this law, a state must ensure that victims have access to an exam free of charge or with a full reimbursement, even if the victim decides not to cooperate with law enforcement investigators. (Previously, states were required to ensure access to exams

free of charge, but could put conditions on the exam, such as cooperating with law enforcement officials.)

Essentially, this law allows victims time to decide whether to pursue their case. A sexual assault is a traumatic event and some victims are unable to decide in the immediate aftermath. Because forensic evidence can be lost as time progresses, A “Jane Doe Rape Kit” enables a victim to have forensic evidence collected without revealing identifying information. For instance, in some states, victims are given a code number they can use to identify themselves if they choose to report the crime at a later date.

Each state has determined different time frames for the storage of a kit. The victim should be informed at the time of the exam as to the length of time the kit will be retained, as well as the disposition of the kit. Your local crisis center can explain all of the options moving forward.

Processing the evidence collected may take only a few weeks, but many areas of the country have significant backlogs. So the wait to have your evidence tested could range from a few weeks to a few months, or even longer.

NOTE: To find a local hospital or healthcare facility that is equipped to collect forensic evidence, contact the OU Advocates confidential hotline (Norman and HSC 405-615-0013; Tulsa 918-660-3163; after hours 918-743-5763). The hotline can connect callers to their local crisis center which can provide information on the nearest medical facility, and in some instances, send an advocate to accompany victims through the evidence collection process.

How Does This Affect My University Case

Victims have the right to seek assistance through both the criminal justice system as well as the University administrative system where the University has jurisdiction over the alleged perpetrator (faculty, staff, student or affiliate of the University). Victims may choose to pursue both administrative and criminal charges simultaneously or may wish to pursue one before the other.

It is important to note that criminal investigations require a much higher burden of proof (beyond a reasonable doubt) than administrative investigations (preponderance of the evidence). Accordingly, if the victim believes he/she may wish to pursue criminal charges, he/she should contact police as soon as possible.

If the University has jurisdiction over the alleged perpetrator and is aware of the allegations, the University must commence its administrative investigation within approximately 10 days of being on notice of the policy violation regardless of whether there is a pending criminal investigation. The University will coordinate with local law enforcement to ensure that its administrative investigation does not compromise the criminal investigation. However, the University is generally not permitted to delay its administrative investigations or findings waiting final disposition of criminal investigations.

The evidence collected as noted above may or may not be necessary for an administrative investigation, depending on the facts of each case. Whether the evidence should or will be admitted in an administrative hearing depends on the status of any criminal investigation and the need for the evidence to support the policy violation and finding. The University may request that the victim provide this evidence, but it is up to the victim whether she wishes to present it as evidence.