

EVIDENCE RETENTION: ACHIEVING JUSTICE, SERVING VICTIMS



**Developing policies and protocol for
evidence retention in sexual assault cases**

THE NATIONAL CENTER FOR
Victims of Crime

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Developing policies and protocol for evidence retention in sexual assault cases

Communities across the country are grappling with the discovery of large numbers of untested rape kits, sitting on evidence shelves, many still within the statute of limitations. Recent advances in DNA testing enable crime labs to analyze DNA evidence that even five years ago was impossible to test. For victims of sexual assault, DNA evidence can play a key role in bringing answers and securing justice, and this makes evidence retention crucial.

In addition to unsolved cases, new attention to wrongful convictions and post-conviction DNA testing is also leading jurisdictions to reexamine or develop policies on evidence retention.

How long should evidence be kept?

There is no uniform answer to this question. Ideally, all evidence could be kept forever, so that any given case could be reexamined if circumstances warranted. In fact, a survey conducted in February 2014 by the National Center found that some jurisdictions opt to keep evidence indefinitely. Others only keep evidence until the expiration of the statute of limitations (SOL). Still others have set a certain time period, ranging from a few months to over 60 years.

For adjudicated cases, jurisdictions reported policies to retain evidence until after the appeals process had been exhausted, for the duration of the offender's incarceration, or until the conclusion of criminal proceedings. Some jurisdictions reported that evidence could only be destroyed after a court or prosecutor's office authorized the destruction.

When setting an evidence retention policy, a jurisdiction should consider:

- Whether their state has an [evidence retention law](#). At a bare minimum, the jurisdiction must ensure its policy meets the statutory requirements.
- The state's criminal [statute of limitations](#) for sexual assault. Several states have no limitation on the prosecution of felony sexual assault or no limitation where DNA has been collected. Others limit the time for bringing a criminal case to a certain number of years after the assault. An evidence retention policy should, at a minimum, extend through the duration of the statute of limitations, to ensure that evidence will remain available as long as a case could be brought.
- The time limits for challenging a conviction. DNA evidence should be retained at least as long as the defendant could challenge his or her conviction on the basis of new testing.
- Other benefits of retaining the evidence, such as the ability to obtain additional information in the future as DNA testing continues to improve, or the potential to test old cases that can no longer be prosecuted (past the statute of limitations), to provide answers to victims or identify offenders.
- How long to retain evidence in non-reported cases. Jurisdictions should include a plan for storing evidence in cases where the victim has undergone a medical sexual assault forensic exam but has not yet decided to report the case to law enforcement. In setting this policy, jurisdictions should consider the length of time that victims are given to decide whether to report the offense to law enforcement—whether set by state law or other policy. This time period may be as short as 30 days or as long as the statute of limitations.

Where should the evidence be stored?

In most jurisdictions, untested evidence storage is the responsibility of the law enforcement agency. In some areas, hospitals and even rape crisis centers will store rape kits.¹ As the sheer volume of evidence to be retained continues to grow, storage becomes an increasing challenge.

Many of the practical concerns for evidence storage are addressed in detail in *The Biological Evidence Preservation Handbook: Best Practices for Evidence Handlers*, developed by the National Institute of Standards and Technologies. This resource helps jurisdictions think about securing the evidence, proper temperature for storing biological evidence, retaining smaller samples of bulky pieces of evidence, and other considerations.

Our survey of jurisdictional practices revealed some other strategies to find space for evidence storage. These included:

- Installing special shelving designed to increase the storage capacity in an evidence room.
- Replacing space-consuming boxes with small, sealable bags.
- Using satellite locations to cope with the growing amount of evidence being retained.
- Partnering with neighboring jurisdictions or a state agency to share resources and space.

Parting thoughts

Your final evidence retention policy should be publicly available and easily accessible. The policy should be clearly communicated within the criminal justice system and available to the public. Victim advocates, in particular, should understand the policy so that they can clearly communicate it to victims as needed. Transparency regarding your evidence retention policy helps to give victims and the public confidence in the investigatory process.

¹ Kits that are not stored in law enforcement custody may present complications related to chain of custody and maintenance of the integrity of the evidence when facilities are ill-equipped to store evidence.