**Model Policy for handling Sexual Assault Evidence**

**PURPOSE:** The 2018 NM State Legislature passed law (SB 475) requiring law enforcement agencies to develop and implement a policy that prescribes how the agency handles sexual assault evidence. Below is a policy developed by the New Mexico Statewide Sexual Assault Kit Initiative (SAKI) Multi-Disciplinary Team, **based on national best practices.** This policy may be used by agencies or serve as a model for the development of the agency’s individual policy.

1. **Sexual Assault Evidence Kits (SAEK)**

Biological evidence from a sexual assault can be collected at the scene, from the suspect, and from the victim. SAEKs are used to obtain biological evidence from victims and suspects. Biological evidence should be collected within the following time frame after the assault:

* Victim: Within 120 hours or 5 days for adults and adolescents 13 years and older.
* Victim: Within 72 hours or 3 days for children 12 years and younger.
* Suspect: Within 72 hours or 3 days if collecting trace DNA or documenting injury; no time window if collecting suspect standard, i.e., buccal swab.

Details below are specific to the biological evidence collected by medical personnel for the Sexual Assault Evidence Kits (SAEK). Law enforcement may collect secondary evidence from the scene; these items will be processed per usual departmental policies regarding evidence submission.

The following procedures will be followed for victim SAEKs:

1. SAEK may be collected from a victim with the victim’s consent if they present within the timeframe noted above. This will be done by specially trained medical personnel i.e., SANE.
2. Biological material collected will be dried prior to packaging and will be securely stored at the medical facility.
3. Investigators will be notified by medical personnel that a SAEK is ready for pickup.
4. Investigators will retrieve the SAEK within seven days.
5. Investigators are responsible for knowing what is in the kit and how it is relevant to the investigation.
   1. Law enforcement personnel are encouraged to work with medical personnel to know what exactly was collected. If victim has consented release, law enforcement is encouraged to obtain and review the SANE medical record as part of their case file investigation.
6. The SAEK patient history form can assist law enforcement determination of what evidence is probative. Crime lab analysts can assist in determining what evidence should be analyzed.
7. If the suspect is identified:
   1. Obtain consent or warrant for a buccal swab as the suspect’s DNA standard.
   2. Within 72 hours and when there is reason to believe trace DNA or injury is present on the suspect’s body, obtain consent to search or an evidentiary search warrant issued for body fluids and hair, and have these items collected. This must be done by specially trained medical personnel i.e., SANE.
8. By law, all kits will be submitted to a forensic lab within 30 days of receipt.
   1. Prior to delivering/sending the SAEK to the laboratory, a DNA acceptance code is required to fill out the Lab Evidence Receipt. Please find detailed Lab submission policies for DNA evidence on the NMDPS Forensic Laboratory website.
   2. **A kit may be opened by forensic lab personnel only.**
   3. Do not staple anything to the exterior of the white SAEK envelope.
      1. A copy of the SAEK patient history form should already be inside the envelope.
      2. The lab does not require a copy of the police report.
9. **Non-reported SAEK**

A non-reported SAEK is from a sexual assault victim who at the time of the examination does not want to file a police report. The SANE Program informs the sexual assault victim of the “non-reported” process, including that if a victim does not file a police report within a year, the non-reported SAEK will be disposed of, and the victim will not be notified of this action; the SANE obtains the victim signature and keeps this form as part of the SANE Medical Record. **\*Please note for adolescents, best practice for storage of a non-reported SAEK is to hold them for at least to one year after their 18th birthday. \***

It is the responsibility of the victim to contact either/both SANE and law enforcement if they wish to convert to “police reported.” SANE may assist the victim in converting the non-reported to reported.

1. Investigators who are notified of the non-reported SAEK kit will adhere to the following practice:
2. Obtain a report number from dispatch or records with the nature code listed as “Information.”
3. The report will contain the name of the facility or person from which the SAEK is retrieved. There will be no listing of the non-reporting victim, only a unique identifying number.
4. The report narrative will detail the date of notification from SANE, the date retrieved, date entered into evidence, and a notation that this is a “non-reported case.
5. Pick up the SAEK from the SANE unit and transfer to the LE evidence unit who will store the SAEK for a minimum of one year.
6. The SANE Program will provide LE a copy of the redacted Informed Consent form for a Non-Reported SAEK as assurance to law enforcement that the patient has been informed that the SAEK will be disposed of without further notification.
7. Non-reported SAEKs are NOT delivered to the servicing crime lab until the victim converts from non-reported to reported.
   1. If a victim converts or changes his/her mind and files a subsequent police report, the SANE program will assist in obtaining victim identifier and SANE medical record.
8. **Drug Facilitated Sexual Assaults (DFSA)**

Drug facilitated sexual assault samples accompany SAEKs in cases where the victim reported that drugs may have been used to facilitate the sexual assault. Due to the nature of these evidence samples, the following procedure will be followed:

1. Do not log the DFSA sample with the SAEK.
2. Form SLD TOX 500 will be completed by the certified medical personnel collecting the DFSA kit.
3. Form SLD TOX 500 will be signed by an investigator to authorize the testing.
   1. Once the SLD TOX 500 form is signed by law enforcement, the medical provider may mail the DFSA kit to the Scientific Laboratory Division Toxicology Bureau.
4. If the DFSA is provided directly to law enforcement, the following procedure will be followed:
   1. If DFSA is collected during evidence hours, deliver directly to an evidence technician so the sample can be sent same day to the lab.
   2. If DFSA is collected outside of evidence hours, contact the on-call evidence technician so it can be refrigerated. The evidence technician will send the DFSA to the lab on the next business day.
   3. The location for mailing or delivery of the DFSA kit is Scientific Laboratory Division Toxicology Bureau, at 1101 Camino De Salud NE, Albuquerque NM, 87102-4519.
      1. Please note, the DFSA kit does NOT go to the Crime Lab.
5. **Other Evidence**

If the victim has disclosed consensual sex 120 hours (5 days) prior to the assault, an attempt should be made to identify and collect a buccal swab from the consensual partner as an elimination/exclusionary swab. The SANE medical record may include the name or initials of the consensual partner.

1. Law enforcement will attempt to identify and collect an elimination/exclusionary swab from the consensual partner, and even if unsuccessful, the attempt must be documented. Documentation of the collection/attempted collection of the elimination/exclusionary swabs is required prior to the upload and comparison of probative profiles to the CODIS database.
2. Proceed with submitting the SAEK to the Crime Lab whether elimination/exclusion swab is obtained or not. If an elimination/exclusion swab is not collected at the time the SAEK is submitted, the Crime Lab will re-request this from law enforcement when they start analysis of the SAEK. Analysis may proceed if requests for exclusionary swabs are documented.
3. A field investigator or crime scene specialist may collect biological evidence from the scene which needs to be packaged and maintained by law enforcement. Scene evidence may also include photographs, witness interviews, etc. which are part of the law enforcement investigation file.
   1. These items are not part of the SAEK and will be processed per usual departmental policies regarding evidence submission.
4. If digital penetration is alleged, the officer or medical personnel should take finger swabs from the suspect when they collect the DNA standard.
   1. It is unlikely to get enough useable male DNA on a female’s vaginal/mons swabs from digital penetration only.
   2. One swab used for all 10 fingers or one per hand is sufficient. It is not necessary to collect individual swabs for each finger.
5. **Data Entry**
6. Complete all necessary and timely data entry and documentation at appropriate milestones during the collection and transferring of sexual assault biological evidence.
7. Update the New Mexico Statewide SAEK tracking website (SAEK Track) at every step of the process, at <https://www.dps.nm.gov/SAKI>.
   1. It is recommended that your SAEK Track dashboard is checked/updated weekly.

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