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**ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2023-1**

**TO:** All Law Enforcement Chief Executives

**FROM:** Matthew J. Platkin, Attorney General

**DATE:** March 13, 2023

**SUBJECT:** **Procedures and Guidelines for Law Enforcement Testing, Tracking, Storage, Retention, and Destruction of Sexual Assault Forensic Examination (SAFE) Kits**

Despite multidisciplinary efforts over the past several decades, sexual violence continues to touch the lives of far too many New Jersey residents. Although our state's law enforcement officers, prosecutors, healthcare providers, and community partners in victim advocacy have all made significant strides in their efforts to eradicate sexual violence, crimes of this nature continue to occur at an alarming rate.

It is well recognized that sexual assault can be one of the most traumatic events an individual may experience. When a person reaches out for assistance, it is imperative that the response is rapid and coordinated to ensure that victims have access to the medical, investigative, and supportive services they need and deserve. Collectively, our goals continue to focus on ensuring that victims are heard and perpetrators are held accountable.

The Office of the Attorney General has promulgated the Standards for Providing Services to Victims of Sexual Assault<sup>1</sup> (the Standards), that provide guidance for a collaborative multidisciplinary approach utilizing a well-defined Sexual Assault Response Team. The Standards affirm the importance of providing victim-centered services in order to best promote an opportunity for healing for the victim. Additionally, the Standards identify best practices for law enforcement personnel and healthcare providers to improve the opportunities to identify, collect, and preserve evidence in all sexual assault cases.



<sup>1</sup> 3<sup>rd</sup> Edition (2018), available online at: <https://www.nj.gov/oag/newsreleases18/AG-SART-Standards.pdf>.

In order to ensure evidence collected in sexual assault cases is preserved and processed in a victim-centered and efficient manner, the State Auditor from the Office of Legislative Services issued a report to evaluate whether there was a Sexual Assault Forensic Examination (SAFE) kit testing backlog in New Jersey in 2019. While no backlog was identified, the report recommended changes to policies for handling and tracking SAFE kits.<sup>2</sup> In response to this report, the Division of Criminal Justice created a SAFE Kit Working Group whose goal was to assess the feasibility of implementing a statewide tracking system and explore options for standardizing the tracking of SAFE kits. The recommendations of this working group were reviewed by the leadership within the Division of Criminal Justice, the Office of Violence Intervention and Victim Assistance, and the Office of the Attorney General, and that collective expertise, as well as the results of the Attorney General’s SAFE kit survey, pursuant to N.J.S.A. 52:17B-245, informed this Directive.

This Directive is intended to modify and build upon the Standards in the areas of collection, tracking, storage, testing, retention, and destruction of evidence and information gathered in the aftermath of an act of sexual assault victimization. The Standards combined with, and modified by, the requirements included in this Directive, will protect the rights of victims and enhance the potential to prosecute offenders.

Pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, I hereby direct all law enforcement agencies<sup>3</sup> follow the guidelines for testing, tracking, storage, retention, and destruction, outlined in this Directive.

**I. Sexual Assault Forensic Evidence (SAFE) Kits and Drug Facilitated Sexual Assault (DFSA) Kits**

SAFE kits and DFSA kits are specifically designed to aid in collection and preservation of specimens and other physical evidence yielded from the Sexual Assault Medical Forensic Exam (the Exam), which can be used in a criminal sexual assault investigation.

Under the Attorney General Guidelines for the Retention of Evidence<sup>4</sup> and the New Jersey Sexual Assault Victim Bill of Rights,<sup>5</sup> victims of sexual violence have the right to decide whether to report the crime and release the forensic evidence to law enforcement. Specimens collected during a forensic medical exam and preserved in SAFE/DFSA kits are *only* provided to law enforcement at the time of the examination *if* the victim consents to release the kit(s) and decides to report the incident to police. When the victim does not consent to release to law enforcement, the SAFE/DFSA kits are unreported and often referred to as “Hold” kits.

Revision to prior Attorney General Directive No. 2011-1 (2014) and the Standards required Hold kits be secured for a minimum of five (5) years from the date of the examination where the victim is an adult, and not less than five (5) years after the victim reaches the age of 18, where the victim is a minor. That time period shall now be extended to twenty (20) years and is consistent with the federal

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<sup>2</sup> See report on the audit of the Department of Law and Public Safety, Office of the Attorney General, Sexual Assault Examination Process for the period of July 1, 2017 to August 31, 2018.

<sup>3</sup> Law enforcement agency includes all law enforcement agencies created by the governing municipal body and promulgated by statute, including municipal police departments, county law enforcement agencies, state law enforcement agencies, and part-time municipal police.

<sup>4</sup> Attorney General Law Enforcement Directive 2011-1.

<sup>5</sup> N.J.S.A. 52:4B-60.1, et seq.

Survivors' Bill of Rights of 2016.<sup>6</sup> This Directive requires the unreported, or Hold kits, be secured for a minimum of twenty (20) years from the date of the examination where the victim is an adult, and a minimum of twenty (20) years after the victim reaches the age of 18, where the victim is a minor at the time of the incident. The County Prosecutors must ensure the SAFE/DFSA kits collected for incidents within their jurisdiction are stored in compliance with the requirements in section IV.B. below.

## **II. Determination on Submitting SAFE Kit for Testing**

All SAFE kits collected where the victim consents to the release of the evidence to law enforcement, shall be submitted to the lab for testing as soon as possible unless the Director of the Division of Criminal Justice or his/her/their attorney designee, or the County Prosecutor or his/her/their attorney designee,<sup>7</sup> reviews the case and the evidence, and determines that the result of SAFE/DFSA kit testing will have no bearing on the outcome of the case, or the victim withdraws consent for the evidence to be released to law enforcement. In these circumstances, the unreported SAFE/DFSA kit will be moved to "hold" status and retained in accordance with section IV.C. below.

If a SAFE/DFSA kit is not tested, when the victim consents to the release to law enforcement, the supervising attorney must clearly document the reason(s) the kit was not tested and include this documentation in the file with the forensic medical report.

Testing of SAFE/DFSA kit contents shall never be declined for the following reasons:

1. An investigator or prosecutor believed the sexual act/contact was consensual;
2. An investigator or prosecutor had no suspects; or
3. The victim filed a complaint against a spouse/partner, or former spouse/partner.

The results of SAFE/DFSA kit testing are not probative to the issue of consent; SAFE kit testing may result in suspect identification; and spouses/partners do not lose legal protection against acts of sexual violence by entering into a marriage or relationship. Therefore, these reasons alone cannot lead to a determination that the SAFE/DFSA kit will have no bearing on the outcome of the case.

In circumstances where the victim initially consents to release to law enforcement but then withdraws consent before the kit has been processed by the lab, the kit will be retained for the same 20-year period it would have been afforded if the kit were unreported and stored in accordance with section IV.B.

In circumstances where the kit(s) are submitted to the lab but investigation reveals additional information which makes further testing unnecessary, the investigating officer will confer with the Director of the Division of Criminal Justice or his/her/their attorney designee, or the County Prosecutor or his/her/their attorney designee, to review the case and determine if the request for analysis at the forensic lab should be withdrawn.

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<sup>6</sup> Survivor Bill of Rights Act of 2016, P. L. No: 114-236, 130 Stat. 966, 2016 Enacted H.R. 5578, 114 Enacted H.R. 5578.

<sup>7</sup> It is foreseeable that County Prosecutors will likely designate the supervising attorneys of their Sexual Violence Unit, Domestic Violence Unit, and/or Juvenile Units to serve as their designee under this provision.

### **III. Procedures for Law Enforcement Tracking, Storage, and Retention, of Sexual Assault Forensic Examination (SAFE) Kits**

#### **A. Kit Tracking System**

All law enforcement agencies in New Jersey are responsible for the custody and tracking of SAFE and DFSA kits, and therefore, all agencies must have a standardized system for tracking the kits. All law enforcement agencies are responsible for documenting their role in processing the SAFE/DFSA kit. Documentation of each agency's role in processing the SAFE/DFSA kit must be retained to show chain of custody. The County Prosecutor is responsible for ensuring the agencies within their county document their role in processing the SAFE/DFSA kits and must incorporate the following minimum requirements for their county's kit tracking system:

1. The SAFE/DFSA kit tracking system shall utilize the agency's existing evidence tracking system. Kits shall be tracked from time of collection by the Forensic Nurse Examiner or other health care provider (approved by a partner law enforcement agency) through transfer to any law enforcement agency to maintain chain of custody. The system shall document the date and time of submission to the forensic laboratory for analysis, the date of return of the kit for ongoing storage, any other releases and returns, and the eventual dates of review for disposition indicating continued hold or date of destruction.
2. The SAFE/DFSA kit tracking system shall provide for anonymity of all unreported SAFE/DFSA kits, and a mechanism to identify and retrieve SAFE kits from the evidence tracking system. This can be accomplished through scannable barcoding or other unique identifiers consistent with the agency's evidence tracking system. Tracking numbers shall be unique and only used once. Regardless of whether a kit is destroyed, the tracking number shall not be reused.
3. The electronic evidence tracking system, at a minimum, shall include the following information:
  - a. Date, time, and identity of the individual who collected the SAFE/DFSA kit;
  - b. Date, time, and identity of any person(s) in possession of the kit(s) before and during transport;
  - c. Date, time, and identity of person(s) who initially submit the kit(s) for storage;
  - d. Date, time, and identity of the evidence custodian who received the kit(s);
  - e. Date, time, and identity of any person to whom the kit(s) was released and the purpose of release; and
  - f. Date, time and identity of person(s) who returned/resubmitted the kit for storage.
4. Evidence items created from analysis or separated from the original item should be documented to show the linkage to the original evidence. The tracking system utilized must enable cross-referencing of all items associated with any single examination.
5. Locations (ex: shelf number/bin) where kit(s) and related items of evidence are stored must be accounted for in the tracking system.

6. Date, time, and identity of person who stored the kit(s), must be accounted for in the tracking system.
7. Date of SAFE/DFSA kit destruction must be recorded in the tracking system.

The resources available to each of the 21 County Prosecutor's Offices vary greatly. Thus, each County Prosecutor has the option to either centralize their county's evidence tracking system for all SAFE/DFSA kits collected within the county, or provide direct oversight of the county's individual law enforcement agencies' tracking systems for compliance with this Directive. If individual law enforcement agencies track their own SAFE/DFSA kits collected, the County Prosecutor's Offices shall review and approve all procedures used by their law enforcement agencies to ensure comply with this Directive. Individual law enforcement agencies must report to the Office of the Attorney General an inventory of all kits in its custody biannually utilizing a standardized reporting mechanism to be established by DCJ within 90 days of the issuance of this Directive.<sup>8</sup> The reporting requirement will be biannual and submitted January 31 and July 31 of each year. The purpose of the biannual report is to ensure ongoing accountability for all kits collected and to accurately evaluate the timeline for SAFE/DFSA kit processing in New Jersey. The specific reporting requirements are detailed in Appendix A.

Using a standardized evidence tracking system in each county will ensure efficiency, credibility, and confidence, in the storage of SAFE/DFSA kits in New Jersey.

## **B. SAFE and DFSA Kit Content Collection and Storage**

Law enforcement agencies shall submit reported SAFE/DFSA kits to the laboratory as soon as possible, but no later than ten (10) calendar days after collection, unless the Director of the Division of Criminal Justice or his/her/their attorney designee, or the County Prosecutor or his/her/their attorney designee determines there is good cause to delay submission to the lab and provides written approval of an extension in time to the agency. In the event that an extension is granted, the SAFE/DFSA kit shall be submitted no later than 10 days after the initiation of charges. The agency having custody of the reported kit(s) is responsible for proper storage and tracking of the kit(s) through time of submission to the forensic laboratory consistent with the tracking requirements enumerated above.

SAFE/DFSA kit storage is paramount in preserving the integrity of kit contents. SAFE kits contain only dry specimens that may include, but not be limited to, dried biological secretions, underwear, hair, as well as debris that can include sand, leaves, grass, *et cetera*. DFSA kits includes blood and urine specimens only.

The DNA contained on swabs taken as a part of a SAFE/DFSA kit collection is stable at a controlled room temperature environment once dried. Swabs and other items within the kit should be fully dried whenever possible prior to sealing the kit. ***If items are still wet, refrigerated storage is required*** to protect the integrity of the evidence. Items containing biological fluids in liquid form that may be resistant to drying, such as diapers, sanitary pads, condoms and fluid stained clothing, should, when initially collected, be packaged separately outside the kit in containers or packaging resistant to leakage. These items must be refrigerated while stored pending submission for laboratory analysis and frozen if being held for longer term storage.

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<sup>8</sup> The first reporting period will include January to December of 2023 and the report will be due January 31, 2024.

The Directive adopts the short-term storage standards from the National Best Practices for Sexual Assault Kits,<sup>9</sup> which provides storage conditions for the type of evidence included in the SAFE/DFSA kit as noted in the following table. The following conditions will apply to all kits – reported and unreported – in an agency’s custody:

<b>Type of Evidence</b>	<b>Frozen</b> Below - 10°C (14°F)	<b>Refrigerated</b> Between 2°C and 8°C (36°F and 75°F) with less than 25% humidity	<b>Temp. Controlled</b> Between 15.5°C and 24°C (60°F and 75°F) with less than 60% humidity	<b>Room Temp.</b>
<b>Liquid blood</b>	Never	Best	Less than 24 hours*	not ideal
<b>Urine</b>	Best	Less than 24 hours, or as soon as possible*	not ideal	not ideal
<b>Dry biological stained item</b>	not ideal	not ideal	Best	Acceptable
<b>Wet items (if they can’t be dried)</b>	Best	Acceptable	Less than 24 hours*	not ideal
<b>Hair</b>	not ideal	not ideal	Best	Acceptable
<b>Swabs with biological material</b>	not ideal	Best (wet)	Best (dried)	not ideal
<b>Buccal swabs</b>	not ideal	not ideal	Best	Less than 24 hours*

\*If operational requirements prevent submission of DFSA kits within 24 hours, specimens must be refrigerated and submitted as soon as possible, but no later than ten (10) calendar days from the date of collection, unless the Director of the Division of Criminal Justice or his/her/their attorney designee, or the County Prosecutor or his/her/their attorney designee determines there is good cause to delay submission to the lab and provides written approval of an extension in time to the agency.

The National Best Practices for Sexual Assault Kits, issued by the Department of Justice,<sup>10</sup> provides guidance regarding storage conditions for the type of evidence included in the SAFE/DFSA kit as noted in the following table. The following conditions will apply to all kits – reported and unreported – in an agency’s custody:

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<sup>9</sup> *National Best Practices for Sexual Assault Kit* at page 53. These best practices are issued by the National Institute of Justice for the Department of Justice, and are available for download here: <https://nij.ojp.gov/topics/articles/national-best-practices-sexual-assault-kits-multidisciplinary-approach>.

<sup>10</sup> *Ibid.*

<b>Type of Evidence</b>	<b>Frozen</b> Below -10°C (14°F)	<b>Refrigerated</b> Between 2°C and 8°C (36°F and 75°F) with less than 25% humidity	<b>Temp. Controlled</b> Between 15.5°C and 24°C (60°F and 75°F) with less than 60% humidity	<b>Room Temp.</b>
<b>Liquid blood</b>	Never	Best	Less than 24 hours	not ideal
<b>Urine</b>	Best	Less than 24 hours	not ideal	not ideal
<b>Dry biological stained item</b>	not ideal	not ideal	Best	Acceptable
<b>Hair</b>	not ideal	not ideal	Best	Acceptable
<b>Swabs with biological material</b>	not ideal	Best (wet)	Best (dried)	not ideal
<b>Buccal swabs</b>	Best (liquid)	not ideal	Best	Less than 24 hours
<b>DNA Extracts</b>	Best (liquid)	Acceptable (liquid)	Acceptable (dried)	Less than 24 hours

SAFE kits should only contain dried specimens, and therefore should be stored in a controlled room temperature environment. DFSA kits, which may contain blood and/or urine samples for toxicology testing, must be refrigerated at all times.

Disposable latex gloves and masks must be worn when handling biological evidence. All items must be individually labeled and packaged to avoid cross contamination. Suspect and victim items must be separated to avoid-cross contamination.

### C. SAFE and DFSA Kit Retention Policy

All SAFE/DFSA kits taken from a victim who has not reported the crime to law enforcement or has not released the collected evidence to law enforcement, shall be retained for a minimum of 20 years from the date of collection, and where the victim is a minor, for a minimum of 20 years after the victim reaches the age of 18.

At the time of collection of the kit, the Forensic Nurse Examiner (FNE) or other healthcare provider will seek the consent of the victim to release the kit to the designated investigative law enforcement agency. In situations where the victim withholds consent to release to law enforcement, the FNE or other healthcare provider conducting the examination shall review options for anonymous retention with the victim, shall ensure documentation of the victim's preferences in the forensic medical record,<sup>11</sup> will advise the victim of the expiration date of the 20-year retention period, and the victim's right to report the assault and submit the kit for testing at any time until the end of the retention period.

When the victim does not consent to release of the SAFE/DFSA kit to law enforcement, the Sexual Assault Response Team (SART) coordinator shall be responsible for submission of the SAFE/DFSA

<sup>11</sup> The forensic medical record is the documentation created by the nurse examiner during the forensic medical exam.

kit to the county designated storage location. Those unreported kits being held will be labeled externally in a manner to protect the confidentiality of the victim and consistent with the requirements of section IV.A.

At the time of SAFE/DFSA kit collection, every victim will be afforded the option to release the kit to law enforcement as part of a criminal investigation, or to request that the SAFE/DFSA kit be retained. Retained SAFE/DFSA kits are identified as unreported or “Hold” kits. The victim will be notified of the right to request an unreported SAFE/DFSA kit be released to law enforcement in furtherance of a criminal investigation at any point during the 20-year retention period. At the conclusion of the 20-year retention period, any unreported kit may be destroyed.

Victims are notified of the end date of the retention period at the time of examination and specimen collection. Victims shall also be provided information on how to release an unreported SAFE/DFSA kit to law enforcement for testing and criminal investigation. County Prosecutor’s Offices must also publicly maintain information on how a victim may release an unreported SAFE/DFSA kit to law enforcement for testing and criminal investigation during the retention period.<sup>12</sup>

SAFE/DFSA kits submitted to law enforcement for investigation and testing shall be retained in accordance with the law enforcement agency’s evidence retention policy and stored in accordance with section IV.B.

Retained and unreported SAFE/DFSA kits collected before the effective date of this Directive shall be retained for 20 years from the date of collection for an adult or twenty (20) years from the date a minor victim reaches the age of 18. County Prosecutors must publicly maintain information on the extended retention period so that all individuals within their jurisdiction are aware of the extension of victims of sexual violence rights with respect to retention of unreported SAFE/DFSA kits.

#### **IV. Destruction of SAFE/DFSA Kits**

At the expiration of the 20-year retention period, the County Prosecutor must decide whether to destroy or continue “holding” the unreported SAFE/DFSA kit. The retention period begins at the time of collection of the SAFE/DFSA kit. This Directive neither recommends nor encourages the destruction of evidence in any circumstances where an investigation of a reported crime may be conducted in the future in which this evidence may have potential value.

Once the retention period has ended, unless the kit is determined to have potential future evidentiary value, the SAFE/DFSA kit may be destroyed. A record of the determination process and the destruction process shall be maintained in the Forensic Medical Record. SAFE/DFSA kit destruction will be documented in the SAFE/DFSA kit tracking system to include the date of destruction.

There is ***no longer*** a requirement for the County Prosecutor to notify the Director of the Division of Criminal Justice, or their designee, before destroying a SAFE/DFSA kit at the expiration of the retention period.

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<sup>12</sup> Members of the County Prosecutor’s Office are no longer required to make individual notifications to victims prior to destruction of kits, as care providers indicate that such notifications are often retraumatizing, and sometimes dangerous for the victim. Under the instant Directive, the retention period is being extended by fifteen years, victims shall be notified of the retention period at the time of collection, and reporting information shall be readily available to the public through our 21 County Prosecutors.



V. **Other Provisions**

- A. ***Supersession.*** This Directive supersedes the “Directive Revising Procedures for Retaining Sexual Assault Forensic Evidence (SAFE) ‘Hold’ Kits and Extending the Time for Victims to Decide Whether to Report the Crime and Release Collected Forensic Evidence to Law Enforcement Authorities,” dated July 10, 2014. This Directive also supersedes any reference to “Five-Year Hold Kits” in the Attorney General Standards for Providing Services to Victims of Sexual Assault, 3<sup>rd</sup> Edition, November 2018. The SAFE/DVSA hold kit period is now 20 years.
- B. ***Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General’s authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the State. This Directive imposes limitations on law enforcement agencies and officials that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.
- C. ***Severability.*** The provisions of this Directive shall be severable. If any phrase, clause, sentence or provision of this Directive is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the Directive shall not be affected.
- D. ***Questions.*** Any questions concerning the interpretation or implementation of this Directive shall be addressed to the Director of the Division of Criminal Justice, or their designee.
- E. ***Effective date.*** This Directive shall take effect September 15, 2023, and shall remain in force and effect unless and until it is repealed, amended, or superseded by Order of the Attorney General. All law enforcement agencies are encouraged to take any anticipatory action it deems necessary related to training on this Directive.



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Dated: March 13, 2023