

Sexual Offense Evidence Kit Model Policy

June 2019



**Municipal Police
Training Council**

New York State Division of Criminal Justice Services
80 South Swan Street, Albany, New York 12210

www.criminaljustice.ny.gov



Sexual Offense Evidence Kit

Model Policy



STATE OF NEW YORK
Division of Criminal Justice Services
Office of Public Safety

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The Sexual Offense Evidence Kit Model Policy is intended to allow for the individual needs of each of the police departments in New York State regardless of size or resource limitations. Law Enforcement are encouraged to customize these protocols to meet their regional needs, while being mindful of the intent of the policy. As with all model policies adopted by the Municipal Police Training Council (MPTC), this policy is non-binding upon agencies within New York State and is meant to serve as a guide to be used in developing a department's individual policy.

The Municipal Police Training Council (MPTC) approved the model policy during their December 2015 meeting and amended the policy during their June 2019 meeting pursuant to Executive Law §838.

Acknowledgements

The New York State Division of Criminal Justice Services (DCJS) acknowledges the extensive work done by the following associations and agencies:

District Attorneys Association of the State of New York

New York State Association of Chiefs of Police

New York State Police

New York City Police Department

New York State Sheriff's Association

New York State University Police

New York State Office of Victims Services

Albany Medical Center Sexual Assault Nurse Examiner Coordinator

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I. PURPOSE

This policy is designed to provide guidance to law enforcement agencies in developing victim-focused written procedures – focused on the needs and concerns of victims to ensure compassionate and sensitive delivery of services in a nonjudgmental manner – for the collection, submission, notification, retention, and disposal of Sexual Offense Evidence Kits (SOEK) in accordance with Executive Law §838-a (3).

II. POLICY

This is a model policy and law enforcement agencies are encouraged to customize these protocols in collaboration with the Office of the District Attorney to meet their agency's needs, while being mindful of the intent of the policy.

The procedures identified in this policy regarding the handling and prompt submission of SOEK evidence are intended to further the interests of justice and provide guidance on the requirements of Executive Law §838-a.

III. DEFINITIONS

- A. **Sexual Offense Evidence Kit (SOEK)** – Developed to create a standard protocol for hospital personnel to follow in the collection of evidence from persons involved in any criminal incident involving a sexual offense. SOEKs contain all the materials, instructions and forms necessary for the collection and preservation of DNA evidence by medical and forensic personnel.
 - 1. **Drug Facilitated Sexual Offense Evidence Collection Kit (DSOEK)** - To be collected in conjunction with the SOEK in cases where it is suspected that drugs were used to facilitate the assault.
- B. **Qualified Medical Facility** - All hospitals within New York State that are compliant with 10 NYCRR sections 405.9(c) and 405.19.
- C. **Forensic Laboratory**
 - 1. Any New York State laboratory operated by state or local government that is accredited pursuant to Executive Law article 49-b and 9 NYCRR Part 6190 et seq.; *OR*

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2. Any clinical or forensic laboratory that performs testing on NYS samples that are materials derived from the human body must hold a New York State Department of Health(DOH) clinical laboratory permit in the required permit category (forensic identity, forensic paternity or forensic toxicology).

Note: NY state and local government forensic laboratories are exempt from obtaining a DOH permit, as are federal government laboratories or laboratories acting for the federal government.

- D. **Sexual Assault Nurse Examiner (SANE)** - A registered nurse (R.N.) or other medical professional who has advanced education and clinical preparation in the forensic examination of sexual assault victims.
- E. **Sexual Assault Forensic Examiner (SAFE)** – Medical professionals currently licensed as a nurse, doctor, and/or physician assistant who receive comprehensive training in the care and treatment of victims of sexual assault.
- F. **DNA** - Deoxyribonucleic acid, which is the genetic material present in all nucleated cells of all living organisms.
- G. **CODIS** - The “Combined DNA Index System” is the term used to describe the FBI’s program of support for three levels of DNA databases: local, state, and national. A DNA profile may be submitted and searched against CODIS.
- H. **New York State DNA Databank¹** - Represents the state level of CODIS containing DNA records (profiles) from crime scene evidence, missing persons and relatives of missing persons, and from offenders either designated to provide a sample by law or who have to provide a sample as a result of a plea bargain; participation in a Department of Community Correctional Services temporary release program; or release on parole or probation. Profiles contained in this database may also be indexed in CODIS.
- I. **Biological evidence** - Semen, blood, saliva, mucus, vomit, hair, tissues, bones, teeth and body organs, sweat, urine and feces, fingernail scrapings, vaginal secretions, skin cells, or any other items that have a reasonable likelihood of containing biological

¹ The State DNA Index System is authorized pursuant to Executive Law Section 995-C.

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evidence and might be able to provide probative evidence related to guilt or innocence through DNA identity testing.

IV. OBTAINING DNA EVIDENCE VIA SEXUAL OFFENSE EVIDENCE KIT EXAMINATION

- A. DNA evidence from SOEKs may be collected, provided the sexual offense victim consents to an examination, by the following methods:
1. Sexual offense victim contacts law enforcement and, after providing consent, is brought or directed to a qualified medical facility; or
 - a. Not all New York State qualified medical facilities employ SANE or SAFE personnel. Accordingly, law enforcement agencies should be aware of which facilities do and do not employ such personnel and encourage and facilitate the victims' use of such facility that employs SANE or SAFE personnel.
 - b. Providing this information to sexual offense victims will allow them the opportunity to choose a qualified medical facility with SANE or SAFE personnel who are trained in caring for victims of a sexual offense.
 - c. Ensure New York State qualified medical facilities, within the law enforcement agency's jurisdiction, are provided the contact information, including name, phone number and e-mail address of the trained² personnel designated to receive all inquiries concerning sexual offense evidence kits from victims.
 2. Sexual offense victim self-reports and goes to a qualified medical facility.
- B. An examination and SOEK is completed by a Sexual Assault Nurse Examiner (SANE), Sexual Assault Forensic Examiner (SAFE), or other qualified medical professional.
- C. Law enforcement personnel should not be present during the

² NYS Executive Law §838-a Section 3(a) requires each police agency, prosecutorial agency and other law enforcement agency within New York State to designate at least one person, who is trained in trauma and victim response that meets the minimum trainings standards in Appendix A.

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examination, unless requested by the victim.

- D. Upon completion of the examination, provided the victim consents to initiating a law enforcement investigation, or the hospital is legally mandated to report, hospital staff will notify law enforcement of the existence of a completed kit.
- E. Law enforcement, within the jurisdiction in which the offense is believed to have occurred, will:
 - 1. Coordinate the custody transfer of the SOEK within 24 hours, where practicable, after notification by the qualified medical facility;
 - 2. Obtain all necessary paperwork when retrieving the SOEK, including the release of evidence and consent form;
 - 3. Only take possession of an SOEK if it is sealed. Sealing of the SOEK should be done by the qualified medical facility. Law enforcement should not open the sealed SOEK; and
 - 4. Ensure the victim, at the time an SOEK is collected or interview is conducted, is provided with:
 - a. A copy of the sexual assault victim bill of rights³; and
 - b. contact information, including name, phone number and e-mail address of the trained personnel designated to receive all inquiries concerning sexual offense evidence kits from victims.
- F. Once the SOEK is in possession of the law enforcement agency, the SOEK is to be properly secured, and stored in the agency evidence room/facility, until it is submitted to a forensic laboratory for analysis pursuant to a strictly documented chain of custody.
 - 1. SOEKs should not be stored in plastic such as a plastic bag.
 - 2. Biological evidence will be stored in a cardboard box or brown paper bag. Biological evidence stored in plastic may degrade the quality of the evidence.
 - 3. DSOEK evidence should be refrigerated. SOEK evidence does not need to be refrigerated.

³ Victim Bill of Rights: <https://www.health.ny.gov/professionals/safe/>

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V. EVIDENCE SUBMISSION DETERMINATION

- A. All newly received SOEK evidence shall be submitted to the forensic laboratory within 10 days after being received from a qualified medical facility.⁴
- B. When necessary, assist forensic laboratories in assessment of case specific information to determine CODIS eligibility of SOEK evidence.⁵
- C. All DSOEK evidence should be submitted to the forensic laboratory as soon as possible, but no later than 72 hours, when practicable. Prior to submitting DSOEK evidence law enforcement agencies should be aware of which forensic laboratories do and do not test DSOEK and if not, coordinate with your local District Attorney to identify an alternative laboratory.
- D. SOEKs should be submitted whether or not a suspect has been identified.
- E. In instances when the victim rescinds consent to an investigation following testing, the law enforcement agency should consult with the Office of the District Attorney to determine if further investigation is appropriate.
- F. Law enforcement will maintain a strict chain of custody when submitting evidence to the laboratory.

VI. LABORATORY RESULTS

- A. Forensic laboratories that receive a SOEK from a law enforcement agency, that came into possession of the SOEK after February 26, 2017, are required, within 90 days of receipt, to access case specific information for CODIS eligibility and, if such kit is eligible, to analyze and attempt to develop a CODIS eligible profile from the kit, and to report the results to the submitting agency.⁶

⁴ The time frame of 10 days is required by law, as stated in N.Y. Executive Law 838-a Section (1)(a).

⁵ Forensic laboratories must assess case specific information as required by law, as stated in N.Y. Executive Law 838-a Sections (1)(b) and (1)(e).

⁶ The time frame of 90 days is required by law, as stated in N. Y. Executive Law 838-a Section

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- B. Chain of custody will continue to be maintained and strictly documented by law enforcement when receiving evidence back from the forensic laboratory.

VII. VICTIM NOTIFICATION PROCESS

- A. Law enforcement and/or the Office of the District Attorney with jurisdiction over a sexual offense should collaborate with advocates, healthcare providers, counseling services, and other service providers, to inform victims about the case status throughout the course of the investigation and prosecution.
- B. Upon request of a victim, who has consented to report a sexual offense to law enforcement, the following notifications and release of information are to be made to the victim obtained from the final laboratory analysis report⁷:
 - 1. Date and location at which sexual offense evidence collected or received from the victim is assessed for CODIS eligibility;
 - 2. Whether a CODIS eligible profile was developed; and
 - 3. Whether or not a DNA match was identified.
- C. Release of DNA match information to victim may be temporarily delayed, prior to the arrest of the suspect alleged to have committed the offense, if the law enforcement agency documents in writing and notifies the victim that release of such information would compromise the successful investigation of the sexual offense.⁸
- D. Notification of the laboratory results to the victim should be coordinated with the investigating agency and/or the Office of the District Attorney and victim advocate. A mutually agreed upon decision should be made regarding when and how to notify the victim. The timing, location and method of notification will vary by case, and all options should be carefully considered.

VIII. EVIDENCE RETENTION

- A. Procedure where no arrest has been made, acquittal after trial, or dismissal of charges.
 - 1. All tested SOEKs will be retained for the duration of the statute of limitations for the offense, or longer if a request is

⁷ Pursuant to N.Y. Executive Law §838-b

⁸ Pursuant to N.Y. Executive Law §838-b

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made from the Office of the District Attorney. The investigating police agency should coordinate with the Office of the District Attorney to determine applicable statute of limitations.

2. With written consent of the Office of the District Attorney and the investigating police agency, tested SOEKs may be disposed of after the duration of the statute of limitations.
- B. All tested SOEKs, for cases resulting in conviction, will be retained until conclusion of the direct appellate process unless the investigating police agency receives written consent for disposal from the Office of the District Attorney.

IX. REPORTING REQUIREMENTS

- A. Law enforcement agencies are required to submit quarterly⁹ reports pursuant to the DCJS required reporting form.
- B. Reporting requirements include:
1. Number of kits that the law enforcement agency received during the quarter.
 2. Number of kits that were submitted to labs for processing of the total number of kits received during the quarter.
 3. Total number of kits “in custody or control”¹⁰ not submitted for processing at the end of the quarter.
 4. Length of time between law enforcement being in receipt of kits and submission to labs during the quarter:
 - a. Number of kits received sent to lab within 10 days of receipt
 - b. Number of kits received sent to lab 11 or more days after receipt

⁹ N.Y. Executive Law 838-a (2)(b) outlines reporting requirements for law enforcement.

¹⁰ “in custody and control” refers to a kit that has been collected by a law enforcement agency and not submitted for testing. This does not include kits that have been collected and tested and then returned to a law enforcement agency by a forensic laboratory.

Appendix A

Sexual Offense Trauma-Informed Victim Response Training Standards

Sexual Offense Trauma-Informed Victim Response Training Standards

Established pursuant to NY Executive Law §838-a Section 3(a)

NYS Executive Law §838-a Section 3(a) requires each police agency, prosecutorial agency and other law enforcement agency within New York State to designate at least one person, who is trained in trauma and victim response that meets the minimum trainings standards outlined in this document.

In addition to the standards discussed below, the Municipal Police Training Council has developed a best practices Sexual Offense Evidence Kit Model Policy to provide guidance to law enforcement agencies in developing victim-focused written procedures for the collection, submission, notification, and disposal of Sexual Offense Evidence Kits.

DCJS with the endorsement of the MPTC sets forth the following training standards in compliance with the Executive Law requirements. All training for law enforcement personnel designated to be trained on trauma-informed response must include but not be limited to: a definition of trauma and its effects on the brain; and application of victim centered trauma informed principles during an investigation and interview. The topics and standards are discussed in more detail below.

Training Standards

I. Definition of Trauma

- a. An event that combines fear, horror, or terror with actual or perceived lack of control and represents a fundamental threat to one's physical integrity or survival. Results from event, series of events or set of circumstances.
- b. Trauma physically changes an individual's brain, triggers the release of chemicals that influence memory, perception, reaction, and distorts time or distance.
- c. Common signs and symptoms of trauma

II. Neurobiology of the Brain

- a. Brain function – automatic responses to trauma/sexual assault
Survival Reflexes to trauma
 - i. Dissociation – coping mechanism that disconnects victim from incident – victim non-responsive, doesn't experience pain of assault
 - ii. Tonic Immobility – being unable to move or speak – victim "present" for assault
 - iii. Collapsed Immobility – decreased heart rate and blood pressure – causes passing out/faintness – victim not understanding what occurred
- b. Trauma, Attention and Memory



Sexual Offense Trauma-Informed Victim Response Training Standards

Established pursuant to NY Executive Law §838-a Section 3(a)

- i. Brain “focuses” on details that allow the victim to survive and cope with the threat when trauma occurs
- ii. Failure to remember specific details about assault
- iii. Details not associated with survival likely not to encode into memory, i.e. time, distance, perception and reaction

III. Application of Trauma Informed Principles

- a. Interaction/Interview with Victim
 - i. Supporting immediate and long-term recovery of victim through empathy, patience and respectfulness
 - ii. Identifying an interview location taking into consideration physical space and surroundings (NYS Executive Law §642)
 - iii. Victim option to have victim advocate or others present, considerations and potential discovery implications when a Victim Advocate or other is present during an interview (NYS Executive Law §642)
 - iv. Establishing rapport – establish common language, avoid leading questions, use open ended questions, avoid blaming language and tone
 - v. Encouraging victim to give statement in their own words uninterrupted.
 - vi. Seeking additional details using trauma informed questions after uninterrupted narrative
- b. Trauma Informed Questions
 - i. Focusing on sensory information (sight, smell, etc.)
 - ii. Painting the picture (i.e., What are you able to tell me about your experience? Help me understand your thoughts when..., Tell me more about...)
 - iii. Explaining questions to eliminate misconceptions
- c. Areas of caution during the interview which could affect victim’s account of the event:
 - i. Interruption
 - ii. Leading/Assumptive questions
 - iii. Why questions
 - iv. Confrontational questions
 - v. Yes/no questions, choice questions
 - vi. Compound questions
 - vii. Paraphrasing, rephrasing or repeating
 - viii. Sequencing



Sexual Offense Trauma-Informed Victim Response Training Standards

Established pursuant to NY Executive Law §838-a Section 3(a)

- ix. Minimizing
 - x. Sharing personal information, advice or opinions
- d. Closing the interview
 - i. Address concerns and questions
 - ii. Inform victim it is normal to recall additional information and to contact interviewer when this occurs
 - iii. Explore potential barriers for future engagement
 - iv. Inquire as to victim's desire for updates, the extent of updates to be provided, and the preferred means of communicating updates