



# South Dakota Sexual Assault Exams

## *What You Should Know*

A Sexual Assault Kit is a set of swabs, slides, envelopes, instructions, and forms specifically designed to collect and preserve physical evidence that can be used in a criminal sexual assault investigation.

- *When should I have an exam?*
  - **The sooner you have an exam, the better. A sexual assault kit is best completed within 6 hours of the assault but can be completed up to 120 hours after.**
- *Who pays for the exam?*
  - **The exam is required by law to be paid for by the County in which the crime was committed. The exam will be completed at no cost to you, the Victim. SDCL 22-22-26.**
- *Do I need to decide if I want to report my case to law enforcement at the time of the kit's completion?*
  - **No. You, the Victim, can decide later whether to report the sexual assault to law enforcement. You can also choose to have the kit completed anonymously as a "Jane Doe Kit" to preserve evidence without reporting the assault. The important thing is to have the kit completed as soon as possible to keep your options open.**
- *If under 18, can I still submit an anonymous kit?*
  - **No, Medical staff cannot force a minor to make a report, however, mandatory reporting laws require that medical staff must report the sexual assault to law enforcement, the state's attorney, or DSS as required by state law.**
- *If you consent to notify law enforcement...*
  - **The health care facility notifies law enforcement, who has 72 hours to retrieve the kit.**
- *If you do NOT consent to notify law enforcement your kit will remain anonymous and...*
  - **The kit is required to be stored for at least 7 years or until the victim reaches age 25, whichever is longer.**
    - The health care facility will anonymously store the kit with law enforcement.
    - All policies for storage will ensure victim privacy.
    - The time frame the kit will be held should be clearly stated.
    - This information/policy should be given to the survivor and be easy to understand.
    - Information on how the survivor can request the kit's release to law enforcement should also be given and explained.
    - The health care facility should answer questions regarding the storage policy.
- *When the kit is released to law enforcement with consent...*
  - **Law enforcement has 14 days to send the kit for analysis per standard practices.**
- *When the kit is submitted to the lab...*
  - **The lab has 90 days to process the kit.**

23-5C-2. A health care facility examining or treating a victim of rape or sexual assault shall give the victim, or a victim or witness assistant, the option of reporting the rape or sexual assault to an appropriate law enforcement agency. A health care facility may not require the victim to report the rape or sexual assault in order to receive an examination or treatment for the rape or sexual assault. A minor age sixteen or older may consent to a sexual assault kit. This consent is not subject to disaffirmance because of minority or disaffirmance of a parent or guardian, and consent of a parent or guardian is not required under this section. A minor's refusal to consent has no impact on any applicable mandatory reporting obligation in law. A health care facility that examines or treats a victim of rape or sexual assault with a sexual assault kit shall release the sexual assault kit to the investigating law enforcement agency, if known, or the law enforcement agency of the jurisdiction where the examination or treatment occurs in accordance with § 23-5C-3. The health care facility shall inform the victim that the sexual assault kit will be preserved by law enforcement for a period of at least seven years from the date of the examination or treatment or until the victim reaches the age of twenty-five, whichever is later, before it is destroyed. Any examination or treatment under this section shall include the preservation of confidentiality of any test, procedure, or sample that may serve as evidence in the prosecution for the rape or sexual assault.

23-5C-3. A health care facility shall assign a code number to a sexual assault kit and provide the code number to the victim as well as information identifying the law enforcement agency where the kit will be stored. The health care facility shall maintain the code record for at least seven years from the date the health care facility examined or treated the victim or until the victim reaches the age of twenty-five, whichever is later. The health care facility may not affix to the sexual assault kit any information of the victim's identity other than the code number under this section. The law enforcement agency to which the health care facility releases the sexual assault kit under § 23-5C-2 shall retrieve the sexual assault kit, containing no identifying information of the victim other than the code number affixed by the health care facility, within seventy-two hours following the date on which the sexual assault kit is assigned a code number under this section. The health care facility shall coordinate the transfer of the sexual assault kit to the law enforcement agency in a manner designed to protect the victim's confidentiality and preserve the evidentiary integrity of the sexual assault kit. A law enforcement agency in possession of a sexual assault kit shall preserve the kit for at least seven years from the date of examination or treatment or until the victim reaches the age of twenty-five, whichever is later, before it is destroyed. If a victim, or a victim or witness assistant, exercises the option of reporting the rape or sexual assault to a law enforcement agency, the code number under this section shall be provided by the victim to the law enforcement agency where the kit is being stored and used to identify the appropriate sexual assault kit. The confidentiality requirements under this section do not impact any applicable mandatory reporting obligation in law associated with abused or neglected minors.

23-5C-4. For any rape or sexual assault that is reported by a victim under § 23-5C-2, the law enforcement agency that receives a sexual assault kit from the health care facility in accordance with §§ 23-5C-2 and 23-5C-3 shall submit the evidence to the Division of Criminal Investigation or another accredited laboratory for analysis no more than fourteen days following the agency's receipt of the sexual assault kit. Any sexual assault kit that is submitted to the Division of Criminal Investigation or another accredited laboratory shall be analyzed within ninety days. Any DNA record for a sexual assault kit analyzed under this section shall be uploaded into a database specified by the Division of Criminal Investigation. Any failure to comply with this chapter does not constitute grounds for challenging the validity of a DNA database match or of any database information in a criminal proceeding. A DNA record may not be excluded as evidence by a court solely on the grounds of failure to comply with this chapter.

22-22-26. County to pay for forensic medical examinations.

The county where an alleged rape or sexual offense occurred shall pay the cost of any forensic medical examination performed by a physician, hospital, or clinic on the victim of the alleged rape or sexual offense. The cost of a forensic medical examination includes:

- (1) Physician, hospital, or clinic services directly related to the forensic medical examination;
- (2) Necessary forensic supplies;
- (3) Scope procedures directly related to the forensic medical examination, including anoscopy and colposcopy;
- (4) Laboratory testing directly related to the forensic medical examination, including drug screening, urinalysis, pregnancy screening, syphilis screening, chlamydia culture, gonorrhea coverage culture, HIV screening, hepatitis B and C screening, herpes culture, and any other sexually transmitted disease testing directly related to the examination;
- (5) Any medication provided during the forensic medical examination; and
- (6) Any radiology service directly related to the forensic medical examination.

