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**ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2023-1 v2.0**

**TO:** All Law Enforcement Chief Executives

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

**DATE:** August 20, 2024.  
(Amending Directive 2023-1 Originally Issued on March 13, 2023)

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

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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.

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<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 Division 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 Attorney General Directive 2023-1, issued on March 13, 2023 ("March 2023 Directive").

The March 2023 Directive modified and built 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. Since the March 2023 Directive, the Office of the Attorney General collected additional data, further consulted with the forensic laboratories responsible for testing SAFE kits, and secured federal grant funding to create a statewide SAFE kit tracking system. The new information obtained and the additional resources secured made it both possible and necessary to update the March 2023 Directive to further this Office's commitment to protecting the rights of victims and enhancing the potential to prosecute offenders.

Therefore, 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 Amended Directive.

I. **Sexual Assault Forensic Evidence (SAFE) Kits and Drug Facilitated Sexual Assault (DFSA) Kits (hereinafter referred to collectively as "SAFE kit" unless individually specified)**

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 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 kits are unreported and often referred to as "Hold" kits.

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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.

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 was extended by the March 2023 Directive to twenty (20) years and is consistent with the federal Survivors' Bill of Rights of 2016.<sup>6</sup> Unreported, or Hold kits, shall 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 III.B. below.

**II. Requirements for Submitting SAFE Kits for Testing**

The requirements previously imposed in Section II of the March 2023 Directive that allowed the Director of the Division of Criminal Justice or a County Prosecutor to determine that a SAFE kit need not be tested in certain instances where the results would have no bearing on the outcome of the case, are no longer in effect and are replaced by the provisions herein.

This Amended Directive establishes a new mandate to prospectively and retroactively test all SAFE kits submitted to law enforcement, when the victim consents. This testing is critical to identifying serial perpetrators of sexual violence and ensures that evidence collected from survivors of sexual trauma is used to meaningfully aid in the investigatory process. To accomplish this goal, the following timeline is implemented:

Requirement	Compliance Date
SAFE kits collected during a forensic exam <i>from this date forward</i> , where the victim consents to the release to law enforcement, shall be submitted to the forensic laboratory <i>within 10 calendar days of the victim's examination</i> .	<b>Effective Immediately</b>
SAFE kits collected by law enforcement <i>from July 1, 2019,<sup>7</sup> through this Amended Directive's effective date</i> , where the victim consented to testing, shall be submitted to the forensic laboratory.	<b>By April 1, 2025</b>
All remaining SAFE kits in cases where the victim consented to release to law enforcement, shall be submitted for analysis consistent with guidelines to be promulgated by the Division of Criminal Justice.	<b>By December 31, 2025</b>

SAFE kits testing results that satisfy eligibility criteria shall be uploaded to the Combined DNA Index System (CODIS).<sup>8</sup> DNA profiles uploaded to CODIS that result in more than one match to another crime of sexual violence, shall be reported by the forensic laboratory to the Director of the Division of Criminal Justice, or their designee, and the New Jersey State Police Regional Operations & Intelligence

<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> This date was selected to prioritize the SAFE kits collected within the last five years (five years having been the retention period up until March of 2023 when that timeframe was extended to twenty years).

<sup>8</sup> CODIS is a national database of several indexes including DNA profiles from both known and unknown offenders and arrestees.

Center (NJ ROIC), as soon as practicable, but no later than seven (7) business days from receipt of the result (this is in addition to notification to the submitting agency and any other notification procedure already in place). Such centralized notification is vital to investigating serial offenders.

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 III.B.

### **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 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 kit. Documentation of each agency's role in processing the SAFE 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 kits and must incorporate the following minimum requirements for their county's kit tracking system:

1. The SAFE 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 kit tracking system shall provide for anonymity of all unreported SAFE 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 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 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 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 kits collected, the County Prosecutor's Offices shall review and approve all procedures used by their law enforcement agencies to ensure compliance 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 the standardized reporting mechanism established by DCJ. 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 kit processing in New Jersey. The specific reporting requirements will be provided by DCJ.

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 Kit Content Collection and Storage**

Law enforcement agencies shall submit reported SAFE 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 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 and 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 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.

The short-term storage standards from the National Best Practices for Sexual Assault Kits must be followed,<sup>9</sup> which provides storage conditions for the type of evidence included in the SAFE kit as noted in the following table. Therefore, 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.

<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>.

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 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	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 Kit Retention Policy**

All SAFE 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.

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

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

When the victim does not consent to release of the SAFE kit to law enforcement, the Sexual Assault Response Team (SART) coordinator shall be responsible for submission of the SAFE kit to the county designated storage location. Those unreported kits being held will be labeled externally in a manner that both protects the confidentiality of the victim and is consistent with the requirements of section III.A.

At the time of SAFE 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 kit be retained. Retained SAFE kits are identified as unreported or “Hold” kits. The victim will be notified of the right to request an unreported SAFE 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 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 kit to law enforcement for testing and criminal investigation during the retention period.<sup>12</sup>

SAFE 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 III.B.

Retained and unreported SAFE kits collected before the effective date of the March 2023 Directive (March 13, 2023) 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 kits.

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

At the expiration of the 20-year retention period, the County Prosecutor must decide whether to destroy or continue “holding” the unreported SAFE kit. The retention period begins at the time of collection of the SAFE kit. 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 is prohibited.

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

There is *no* requirement for the County Prosecutor to notify the Director of the Division of Criminal Justice, or their designee, before destroying a SAFE 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.



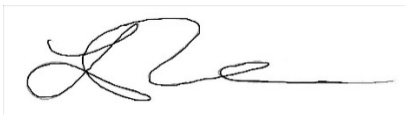
V. Other Provisions

- A. **Supersession.** This Amended Directive supersedes the following: 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; Directive 2023-1, “Procedures and Guidelines for Law Enforcement Testing, Tracking, Storage, Retention, and Destruction of Sexual Assault Forensic Examination (SAFE) Kits, issued March 13, 2023, and 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..
- B. **Non-enforceability by third parties.** This Amended 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 Amended 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 Amended 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 Amended Directive shall be severable. If any phrase, clause, sentence or provision of this Amended 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 Amended Directive shall be addressed to the Director of the Division of Criminal Justice, or their designee.
- E. **Effective date.** This Amended Directive shall take effect immediately 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 Amended Directive.



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Attorney General

ATTEST:



Lyndsay V. Ruotolo  
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Dated: August 20, 2024