

VAWA Forensic Compliance/Anonymous Reporting Protocol

Memorandum of Understanding

Mission Statement: North Carolina's Anonymous Reporting Protocol will allow the state to comply with the 2005 reauthorization of the Violence Against Women Act by not requiring victims of sexual assault to participate in the investigation and prosecution of the offender as a condition to receiving a forensic medical exam with no out-of-pocket cost to the victim. In addition, the Anonymous Reporting Protocol will encourage those who are victims of sexual assault to seek and receive medical treatment without fear of being identified if they choose not to report the sexual assault to law enforcement.

History: The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), 42 U.S.C. § 3796gg-4(d), provides that states may not "require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursement for charges incurred on account of such an exam, or both."

The Governor's Crime Commission (GCC) convened a committee of interested parties in the criminal justice system to identify and address the various issues involved with North Carolina's compliance with the VAWA 2005 Forensic Examination Requirement. To that end, the Forensic Committee, under the leadership of GCC Chair Linda Hayes, met various times to perform the following:

- (1) Establish policy and procedure recommendations when a victim of rape does not want to proceed through the criminal justice system and consents to a forensic examination.
- (2) Establish policy and procedure recommendations for the transfer, storage and retrieval of evidence kits.
- (3) Establish policy and procedure recommendations for victims who come forward with the intent to prosecute.
- (4) Establish policy and procedure recommendations regarding the disposition of anonymous evidence kits, length of storage, destruction of evidence, and victim notification.

After much discussion, the Forensic Committee concluded that the best way to comply with VAWA 2005 is to institute the option of anonymous reporting for sexual assault victims. Anonymous reporting emphasizes keeping the victim's identity from law enforcement unless the victim wishes to report the crime.

Hospitals will inform the victim that they may choose not to report the incident to law enforcement but still receive a forensic medical exam with no out-of-pocket cost. If the exam is conducted within the statutory period of time, the hospitals will not bill the victim, but will instead seek reimbursement from the Rape Victim Assistance Program (RVAP). To further encourage victims to seek medical treatment and undergo a forensic medical exam, the committee elected to institute a policy that would allow the hospitals

to collect the relevant evidence during the exam and then send it to a central storage facility, thereby protecting the victim's identity from local law enforcement. Local law enforcement's only role if the victim does not wish to report the sexual assault is to transfer the sealed evidence package from the hospital to the United States Postal Service to be delivered to the storage facility.

The committee discussed the need for consistency and uniformity for the benefit of all involved, including hospitals, victims, and law enforcement. The committee recognized the limited ability of local law enforcement agencies to store this evidence given that no investigation would yet be conducted. Furthermore, the committee recognized the need for the preservation of the chain-of-custody in order that this evidence will be valuable and admissible at trial in the event the victim subsequently chooses to report the crime to law enforcement. In order to facilitate the goals of the Mission Statement, the member agencies agree to abide by the following policies and procedures:

North Carolina Hospitals:

- When a victim of sexual assault presents to the hospital for treatment or for a forensic medical exam, the hospital will ascertain whether the victim wishes to report the event to law enforcement.
- If the victim does not wish to report the sexual assault to law enforcement, the hospital will not report the incident to law enforcement.
- The hospital will have the victim complete an Anonymous Report Form. The hospital will retain one copy of this form as part of the victim's medical record. Two additional copies of this form will be required as described below.
- The victim will sign a Consent Form which will explain the benefits of cooperating with law enforcement and the effects of delaying an interview with law enforcement, as well as information on how long the evidence will be kept and instructions on what they should do if they decide to report the incident to law enforcement.
- Upon consent of the victim, the hospital will conduct the forensic medical exam and render any medical treatment required.
- The hospital will retain one copy of this Consent Form as part of the victim's medical record and will provide one copy of this Consent Form to the victim.
- The hospital will inform the patient that the evidence will be stored in a central repository for at least one (1) year. The victim will be informed that after that period of time, the evidence may be destroyed and they will not be notified.
- When the exam is complete, the hospital will place the rape kit and any other evidence collected into the outer anonymous mailing box provided by the SBI.

The hospital will complete the Evidence Checklist. The hospital will retain one copy of the Evidence Checklist as part of the victim's records.

- The hospital will place one copy of the Anonymous Report Form and one copy of the Evidence Checklist inside the box with the evidence.
- The outside of the box will include an area for the documentation of the chain of custody as well as a pre-printed, postage-paid mailing label. This label will include the address for Law Enforcement Support Services (LESS) as both the destination and return address.
- The hospital will securely attach an envelope to the outside of the box that will contain one copy of the Evidence Checklist and one copy of the Anonymous Report Form.
- In summary, one copy of the Anonymous Report will be inside the box, one copy of it will be outside the box inside the affixed envelope. Additionally, one copy of the Evidence Checklist will be inside the box, one copy of it will be outside the box inside the affixed envelope. The hospital will retain copies of each.
- After sealing the box, the appropriate hospital personnel will document his or her actions in the chain of custody area on the outside of the box.
- There should be no identifying information on the outer anonymous mailing box; only the chain-of-custody information, the affixed envelope with the Evidence Checklist and Anonymous Report Form, and the mailing label will be on the outside of the box.
- The hospital will call the law enforcement agency identified in this MOU to pick up the anonymous box. This agency may or may not be the agency with actual jurisdiction over the crime if it is eventually reported.
- The hospital will at all times maintain an appropriate chain-of-custody by ensuring that the appropriate employee will retain care and control of the package until it is picked up by the appropriate law enforcement agent.
- The hospital will document this course of action on the chain of custody section on the outer mailing box and will include a summary of these actions in the victim's medical record.

North Carolina Law Enforcement Agencies:

- After a victim has been examined and treated at an area hospital, the hospital will contact the law enforcement agency identified in this MOU to pick up the evidence kit, which will be packaged in the anonymous mailing box with a pre-printed, pre-paid mailing label addressed to the LESS facility.

- The law enforcement agency identified in the MOU may or may not be the agency with jurisdiction over the crime if it is eventually reported.
- The law enforcement agent will document his or her possession of the evidence in the chain of custody section on the outside of the box. The agent will then place the anonymous box into the care of the United States Postal Service for shipment to the LESS facility.
- If the victim subsequently reports the sexual assault to local law enforcement, local law enforcement will obtain a signed release from the victim, allowing them to retrieve the evidence from the LESS facility and/or allowing LESS to transport the evidence to the appropriate crime lab for processing.
- Local law enforcement utilizing the SBI Crime Lab will access the SBI Crime Lab database in order to generate a ticket to process the evidence when it arrives at the Crime Lab.
- Local law enforcement will conduct the investigation pursuant to standard operating procedures, including collecting the medical records from the hospital and the results from the SBI lab or other lab when available.

Law Enforcement Support Services (LESS):

- The LESS facility will receive for storage the anonymous boxes, containing the evidence kit and packaged according to the above-described procedure.
- LESS will obtain identifying data from the envelope attached to the outside of the box and enter that information into a database so that it may be retrieved at a later time.
- At this time, LESS personnel will not open the box unless directed to do so in order to store certain items in a different environment, such as a refrigerator or freezer.
- LESS will store the evidence in the box in a proper environment according to agency protocol.
- Upon receipt of a written request from law enforcement, signed by the victim, LESS will retrieve the evidence box and transport it to the SBI lab or other appropriate lab for processing. Local law enforcement may also retrieve the evidence box themselves and transport it to the appropriate crime lab.
- At all times, LESS will maintain a proper chain-of-custody, documenting the care and control of the evidence on the outside of the box or in any other appropriate manner.

- In the event that the victim does not report, LESS will store the evidence box for at least one year. The evidence may be stored for a longer period of time as space and funding permit.

Signatures

Neil Woodcock, Director Date
Law Enforcement Support Services
NC Department of Crime Control and Public Safety

Chief/Sheriff Date

Administrator, Hospital Name Date