



# South Dakota Sexual Assault Kits 2021

## *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 7 days 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 release your kit to law enforcement. You can also choose to have the kit completed anonymously as a "Jane Doe Kit". The important thing is to have the kit completed as soon as possible to keep your options open.**
- *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 is required to turn the kit over to law enforcement, but the identity of the victim is kept private. SDCL 23-5C-2.
    - The health care facility is required to assign the kit a code number which is provided to the victim as well as the name of the law enforcement agency where the kit was taken. SDCL 23-5C-3.
    - Law Enforcement shall store the kit, with the assigned code number, for at least 7 years or until the victim turns 25, whichever is longer.
    - All procedures used by the health care facility shall ensure victim privacy.
    - If the victim decides to release the kit and proceed with the case, the victim should provide the code number to law enforcement.
- *When the kit is released to law enforcement...*
  - **Law enforcement has 14 days to obtain the kit and send 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. Report of rape or sexual assault--Option of reporting--Requirement of reporting prohibited--Release of sexual assault kit--Preservation of sexual assault kit.

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 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. Code number assigned--Period code number maintained--Retrieval and transfer of sexual assault kit--Preservation of kit.

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.

23-5C-4. Submission of kit evidence to Division of Criminal Investigation or other laboratory for analysis--Time limits--Record uploaded to database.

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.

23-5C-1. Definitions. Terms used in this chapter mean:

- (1) "Accredited laboratory," a DNA laboratory that has received formal recognition that it meets or exceeds a list of standards, including the FBI director's quality assurance standards, to perform specific tests;
- (2) "DNA," deoxyribonucleic acid;
- (3) "DNA record," the DNA identification information stored in the state DNA database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the result obtained from the DNA analysis. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification analyses on an individual's DNA sample are also collectively referred to as the DNA profile of an individual;
- (4) "Health care facility," any institution, sanitarium, birth center, ambulatory surgery center, chemical dependency treatment facility, hospital, nursing facility, assisted living center, rural primary care hospital, adult foster care home, inpatient hospice, residential hospice, place, building, or agency in which any accommodation is maintained, furnished, or offered for the hospitalization, nursing care, or supervised care of the sick or injured; and
- (5) "Sexual assault kit," 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.

22-22-26. Payment for rape or sexual offense examinations--Reimbursement by convicted defendant. If a physician, hospital, or clinic examines the victim of an alleged rape or sexual offense the examination shall be provided without cost to the victim. The physician, hospital, or clinic shall be paid for the cost of the examination by the county where the alleged rape or sexual offense occurred, which shall be reimbursed by any defendant if convicted.