
Governor Terry McAuliffe's Task Force on Combating Campus Sexual Violence
Chair Attorney General Mark Herring

Law Enforcement Subcommittee

Recommendation Topic:

Collection and Retention of Physical Evidence Recovery Kits (PERKs) in All Cases of Sexual Assault, Including Cases of Blind Reporting

Recommendation:

In Virginia, law enforcement is not required by Code to “accept responsibility for the receipt, transport, and/or storage of evidence without a report from the complainant.” Under Executive Order 92 by Governor Timothy M. Kaine (2009), the Division of Consolidated Laboratory Services of the Department of General Services is directed “to accept and store evidence from Physical Evidence Recover Kits (PERK) received from health care providers provided that: the PERK examinations have been conducted by a health care provider on victims complaining of sexual assault under Article 7 (§[18.2-61](#) et seq.) of Chapter 4 of Title 18.2...”

“Victims complaining of sexual assault shall not be required to participate in the criminal justice system or cooperate with law-enforcement authorities in order to be provided with such forensic medical exams” (Virginia Statute § 19.2-165.1. Payment of medical fees in certain criminal cases; reimbursement).

Many law enforcement agencies are unwilling to accept PERKs via the restricted reporting (blind reporting, anonymous) process. In this situation, the PERK is mailed to the Division of Consolidated Laboratory Services for storage. In Virginia, PERKs are discarded after 120 days without notification to the victim.

Recommendation 1:

Evidence should be retained by law enforcement in the jurisdiction where the crime is reported to have occurred, even in cases of blind reporting.

A best practice model for restricted reporting (blind reporting, anonymous) and evidence collection in Virginia would include the following:

- 1) type of evidence that will be collected and stored;
- 2) length of time evidence will retained (with regard to the statute of limitations or preferably, held indefinitely);
- 3) handling and labeling of evidence;
- 4) pick-up and storage of evidence by law enforcement in the jurisdiction where the crime is reported to have occurred;
- 5) consent by the victim regarding collection, release of evidence, length of time evidence will be held and notification regarding disposal of evidence.

Recommendation 2:

Physical Evidence Recovery Kits (PERKs) should be retained for a minimum of two years, or in the case of a victim who is a minor, for a minimum of two years from the point the victim turns 18.

Need:

For victims who blindly report, the current Virginia guideline does not allow for collection of full clothing, urine or blood specimens (for drug testing). As is evidenced by current research, clothing worn by the victim at the time of the assault or shortly thereafter may contain biologic evidence that may link an offender to the reported assault. Current research also supports that alcohol and drugs are likely to have been involved that could have rendered a victim unable to give consent. Being able to submit urine and blood specimens as possible evidence could help prove lack of ability to consent by the victim.

Currently, there is no set national guideline for the length of time evidence should be retained, with variation from state to state. With no statute of limitations for felony criminal sexual assault in Virginia, valuable evidence could be destroyed and unavailable for testing and usage as evidence should a victim decide to seek prosecution in the future. Processing of all PERKs could also potentially link serial cases, as evidence has shown that the majority of sexual assault is serial in nature.

End Violence Against Women International's (EVAWI) *Reporting Methods for Sexual Assault Cases* (www.evawintl.org), the You Have Options Program's (<http://www.reportingoptions.org/>) *Retention of Sexual Assault Evidence*, the Cambria County, Pennsylvania's *Sexual Assault Protocol* (model protocol) and the U. S. Department of Justice Office on Violence Against Women's *National Protocol for Sexual Assault Medical Forensic Examinations-Adults/Adolescents (2nd edition)* (<https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf>) were reviewed and support the noted recommendations as best practices.

Anticipated Challenges to Implementation of Recommendation:

A counter argument might be that local law enforcement agencies have insufficient space to hold PERKs for longer periods or indefinitely, no matter which reporting process is chosen by the victim (blind/restricted or reporting process). The Division of Consolidated Laboratory Services of the Department of General Services could provide current numbers of PERKS being stored and how many have been stored since requirement to store was initiated. Anecdotally, this number is reported as low by forensic nurses collecting evidence kits routinely across the Commonwealth of Virginia.

Implementation:

New legislation would be required mandating that law enforcement collect and store all blind reporting cases. New legislation would be required mandating storage of PERKS, indefinitely for felony sexual assault cases. A best practice model for sexual assault cases would contain specific criteria related to blind reporting and retention of evidence.

Likely proponents of this recommendation would include advocacy programs and healthcare providers collecting PERKs.

Fiscal Impact:

This proposal would require law enforcement personnel resources to retrieve evidence after it is collected. This proposal would not generate revenue. A budget amendment would not be necessary.