



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

7/29/2024 2:05:36 PM

Office of West Virginia  
Secretary Of State

**NOTICE OF AN EMERGENCY RULE**

AGENCY: Crime Delinquency And Correction TITLE-SERIES: 149-11

RULE TYPE: Legislative Amendment to Existing Rule: Yes

RULE NAME: Sexual Assault Forensic Examinations

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

W. Va. Code 15-9B-4

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN:

W. Va. Code 64-6-1(c) in Senate Bill 36 from the 2024 Regular Session was the legislative action on the rule and the rule was filed on May 7, 2024 with an effective date of August 5, 2024. The need for the emergency rule is the effective date of the rule

PRIMARY CONTACT:

NAME: Brandolyn N Felton-Ernest

ADDRESS: 1900 Kanawha Blvd E

Building 1, Room W-400

EMAIL: brandolyn.feltonernest@wv.gov

PHONE NUMBER: 304-205-6834

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Per the Executive Director of the West Virginia Foundation for Rape Information and Services and the Chair of the SAFE Commission:

Justification for Emergency Rule Forensic Examiner Training

## WV Sexual Assault Forensic Examination (SAFE) Commission

**Issue:** The statewide infrastructure to fully implement pending rule 149 CSR 11 outlining sexual assault forensic exam training requirements and the credential vetting process is not in place and will not be in place by its August 5, 2024 effective date, therefore an emergency rule is needed to extend the effective date of one section (3.1) of the rule.

**Background:** In late February 2023, the WV legislature tasked (SB89) the Sexual Assault Forensic Examination (SAFE) Commission to promulgate a legislative rule to address several issues related to sexual assault forensic exam evidence collection and storage. The SAFE Commission is not a state agency but is a statutorily created group comprised of designated but voluntary participants. The group immediately began working to create its first-ever legislative rule (which required foundational components such as definitions and researching practices from other states). An 8-page rule was created and submitted by the 6/30/23 deadline.

Forensic exams are best conducted by a SANE nurse, who must complete 40 hours of online training (40 hours for adult and adolescent exams and/or 40 hours for pediatric exams), attend at least 2 days of clinical skills training, and demonstrate gynecological exam competency through a preceptor. Rule 149 CSR 113 also requires the creation of online modules for physicians conducting the exams. The online course creation process is lengthy, involving not only the creation of approximately 35 training modules per course, but also determining how the completion will be documented and continuing education credits offered for nurses and physicians. In addition to creating the necessary infrastructure, this complex process includes creating a credentialing process for examiners, and a process for all of the states hospitals to certify that they meet the criteria. For those examiners who have already been trained, a process for grandfathering must be established for recognized training sources (such as the International Association of Forensic Examiners) as well as a process for vetting sources for examiners trained elsewhere has to be established. The SAFE Commission also was tasked with addressing the use of teleSANEs, for which no in-state program exists.

For the 2024 fiscal year budget that began 7/1/2023, the legislature appropriated funding for the first time to address training of sexual assault nurse examiners (SANEs) in the state. The SAFE Commission awarded those funds to the state sexual assault coalition (the WV Foundation for Rape Information and Services) in August to hire a WV SANE Project Coordinator to coordinate this massive project. That position was immediately advertised nationally, and no viable candidates. To make the position more attractive to a very small possible candidate pool of nurses, the coalition then spent the next several months working with the Administrative Services, Justice and Community Services section to have the position hired by the state. That process was lengthy, requiring approval by the Secretary's office, Governor's office, and state personnel committee (which only meets monthly). The position was then advertised again in January, interviews conducted, the position offered and finally filled on 4/15/2024.

**Status:** Full implementation of the rule that will be effective 8/5/2024 is possible except for section 3.1. A 40-hour online adult/adolescent course was previously completed and is now approved by the International Association of Forensic Nurses. A two-day clinical skills training for adult/adolescent exams has been implemented and 2 trainings conducted with 19 nurses since May. The 40-hour online pediatric course is in development and is on track to be launched in late fall 2024. The clinical skills training for pediatrics has not been developed but a contractor has been identified to assist with the process. The 3 modules for physicians is just beginning to be developed. The sexual assault coalition partnered with one of the state universities to secure a federal grant to recruit preceptors to assist with the clinical competency component once nurses complete the online course. That grant was approved with a start date of 7/1/2024. The SAFE Commission's training committee is working to outline the approval process for hospitals for their staff conducting exams and create a data base for credentialing examiners. Telehealth groups have been researched and one will be meeting with the SAFE Commission at its 8/22/24 meeting.

While there has been significant progress in trying to meet the 8/5/2024 legislative rule effective date, the reality is that the infrastructure will not be in place in time. In addition to creating the data systems and training curricula, actually training the hospital staff who work multiple shifts at over 70 hospital facilities geographically spread across the entire state logistically takes time.

**Need for An Emergency Rule:** When someone is sexually assaulted, the only reason for having a medical forensic exam is to collect potential DNA to assist with the criminal justice process. This is a traumatic time for victims, and they realistically are not going to drive around the state (without bathing, or going to the bathroom or rinsing out their mouth) trying to find a facility that has eligible staff to conduct the exams. Section 3.1 of the rule that is effective 8/5/2024 will exponentially limit who can conduct those exams, as all training has to be vetted by the SAFE Commission (and that process is not in place yet). Any hospital conducting sexual assault forensic exams on 8/5/2024 or after will not be compliant with the rule. This will enable defense attorneys to argue that any sex crime kit evidence was not legally collected (thus making the evidence inadmissible in court), and would possibly enable victims to hold hospitals liable. Hospitals will have little choice than to immediately stop conducting exams until they are compliant.

Request: To prevent the very likely occurrence of victims not being able to obtain forensic exams in WV effective 8/5/2024, the SAFE Commission is requesting that an emergency rule be approved to establish the effective date of the pending rule to by adding the following highlighted language: §149-11-3. Treatment of sexual assault victims. 3.1. By 1/1/2026, every hospital shall have available 24 hours a day seven days a week.

DOES THIS EMERGENCY RULE REPEAL A CURRENT RULE? No

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND OR EXPIRED? No

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

0

B. ECONOMIC INPACT ON SPECIAL REVENUE ACCOUNTS:

0

C. ECONOMIC IMPACT ON THE STATE OR ITS RESIDENTS:

0

D. FISCAL NOTE DETAIL:

---

**Effect of Proposal**

**Fiscal Year**

---

	<b>2024 Increase/Decrease (use "-")</b>	<b>2025 Increase/Decrease (use "-")</b>	<b>Fiscal Year (Upon Full Implementation)</b>
<b>1. Estimated Total Cost</b>			
<b>Personal Services</b>			
<b>Current Expenses</b>			
<b>Repairs and Alterations</b>			
<b>Assets</b>			
<b>Other</b>			
<b>2. Estimated Total Revenues</b>			

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

**Yes**

**Brandolyn N Felton-Ernest--By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

TITLE 149  
LEGISLATIVE RULE  
GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION

SERIES 11  
SEXUAL ASSAULT FORENSIC EXAMINATIONS

**§149-11-1. General.**

1.1. Scope. -- This rule establishes requirements for the treatment of sexual assault victims at a health care facility that provides sexual assault forensic exams.

1.2. Authority. -- W. Va. Code §15-9B-4.

1.3. Filing Date. -- ~~May 7, 2024.~~

1.4. Effective Date. -- ~~August 5, 2024.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2029.

1.6. Applicability. -- This rule is applicable to any health care facility that provides sexual assault forensic exams.

**§149-11-2. Definitions.**

2.1. "Acute" means within 96 hours of a sexual offense as defined subsection 2.19.

2.2. "Advanced practice registered nurse" or "APRN" has the meaning ascribed in W. Va. Code §30-7-1 *et seq.*

2.3. "Alcohol-facilitated sexual offense" means the use of any alcoholic beverage in the commission of a sexual offense.

2.4. "Drug-facilitated sexual offense" means the use of a chemical submissive agent in the commission of a sexual offense that produces relaxant effects, blackouts, coma, impaired judgment, or loss of coordination.

2.5. "Health care professional" means a physician, a physician assistant, a sexual assault forensic examiner, an APRN, a registered professional nurse, a licensed practical nurse, or a sexual assault nurse examiner.

2.6. "Health care facility" means a publicly or privately owned facility, agency or entity that offers or provides health services, whether a for-profit or nonprofit entity and whether or not licensed, or required to be licensed, in whole or in part.

2.7. "Hospital" means a facility licensed pursuant to the provisions of W. Va. Code §16-5B-1 *et seq.* that primarily provides inpatient diagnostic, treatment, or rehabilitative services to the injured, disabled, or sick persons under the supervision of physicians with a 24-hour emergency department.

2.8. "Licensed practical nurse" has the meaning ascribed in W. Va. Code §30-7a-1 *et seq.*

2.9. “Medical forensic services” means health care delivered to patients within or under the care of a qualified medical provider who is trained to conduct medical forensic examinations. "Medical forensic services" includes, but is not limited to, taking a medical history, performing photo documentation, performing a physical and anogenital examination, assessing the patient for evidence collection, collecting evidence in accordance with a statewide sexual assault evidence collection program administered by the West Virginia State Police using the Sexual Assault Evidence Collection Kit, if appropriate, assessing the patient for drug-facilitated or alcohol-facilitated sexual offense, and appropriate discharge and follow-up healthcare planning.

2.10. “Nonreported kit” means a kit collected from a sexual assault victim who has consented to the collection of the kit but has not consented to participation in the criminal justice process.

2.11. “Photo documentation” means digital photographs or colposcope videos stored and backed-up securely in the original file format.

2.12. “Physician” means a person licensed to practice medicine in all its branches as defined in W. Va. Code §30-3-1 *et seq.*

2.13. “Physician assistant” has the meaning ascribed in W. Va. Code §30-3E-1 *et seq.*

2.14. “Qualified medical provider” includes:

2.14.1. a registered professional nurse who has completed a sexual assault nurse examiner course and clinical skills session(s) approved by the SAFE Commission.

2.14.2. a physician who has completed a modified training course approved by the SAFE Commission.

2.14.3. an advanced practice registered nurse who has completed a modified training course approved by the SAFE Commission.

2.14.4. a registered professional nurse who has completed a 40-hour sexual assault nurse examiner course approved by the SAFE Commission and has access to a teleSANE.

2.15. “Registered Professional Nurse” has the meaning ascribed in W. Va. Code §30-7-1 *et seq.*

2.16. “SAFE Commission” means the Sexual Assault Forensic Examination Commission created by W. Va. Code §15-9B-1 *et seq.*

2.17. “Sexual Assault Evidence Collection Kit” or “SAECK” or “kit” means a set of materials, including, but not limited to, swabs and tools for collecting blood samples, clothing, or other materials used to gather forensic evidence from a sexual assault victim of an acute sexual offense and the evidence obtained with the materials.

2.18. “Sexual Assault Forensic Examiner” means an APRN or registered professional nurse who has completed a 40- hour sexual assault forensic examiner course and advanced practicum skills session(s) approved by the SAFE Commission.

2.19. “Sexual offense” means any offense or attempted offense in the jurisdiction of the state in which a Sexual Assault Evidence Collection Kit is collected, including, but not limited to, the following code sections:

- 2.19.1. W. Va. Code §61-8-12;
- 2.19.2. W. Va. Code §61-8A-2;
- 2.19.3. W. Va. Code §61-8A-4;
- 2.19.4. W. Va. Code §61-8A-5;
- 2.19.5. Any offenses listed in W. Va. Code §61-8B-1 *et seq.*;
- 2.19.6. Any offenses listed in W. Va. Code §61-8C-1 *et seq.*; and
- 2.19.7. Any offenses listed in W. Va. Code §61-8D-1 *et seq.*

2.20. “Sexual assault nurse examiner” or “SANE” means an APRN or registered professional nurse who has completed a 40- hour sexual assault nurse examiner course and advanced practicum skills session(s) approved by the SAFE Commission.

2.21. “Sexual assault victim” or “victim” means a person who presents for medical forensic services in relation to injuries or trauma resulting from a sexual offense.

2.22. “teleSANE” means certified sexual assault nurse examiner with documented expertise who provides forensic exam guidance through telehealth technology and is an approved provider by the SAFE Commission.

**§149-11-3. Treatment of sexual assault victims.**

3.1. By January 1, 2026, Every hospital shall have available 24 hours a day seven days a week:

3.1.1. Qualified medical personnel performing exams on adults/adolescents who have completed a 40-hour sexual assault nurse examiner course and demonstrate clinical competency as outlined and approved by the SAFE Commission;

3.1.1.a. Qualified medical personnel performing exams on pediatric (under age 14)/adolescent victims (ages 14-18) who have completed a 40-hour pediatric sexual assault nurse examiner course and demonstrate clinical competency as outlined and approved by the SAFE Commission;

3.1.2. Physicians, physician assistants, or APRNs who have completed a modified training course, or registered professional nurses who have completed a 40-hour, adult/adolescent sexual assault nurse examiner course and have access to a teleSANE. All courses, modified courses, and teleSANE providers must be approved by the SAFE Commission; or

3.1.3. In lieu of the requirements contained in subdivisions 3.1.1. and 3.1.2., a signed written agreement with a hospital that is in compliance with the requirements of subdivisions 3.1.1. and 3.1.2.

3.2. A health care facility that provides sexual assault forensic exams shall provide the following services:

3.2.1. Appropriate medical forensic services without delay, in a private, age-appropriate, or developmentally appropriate space, required to ensure the health, safety, and welfare of a sexual assault

victim and that may be used as evidence in a criminal proceeding against a person accused of the sexual offense, in a juvenile delinquency proceeding under W. Va. Code §49-4-701 *et seq.*;

3.2.2. An offer to complete the Sexual Assault Evidence Collection Kit for any sexual assault victim who presents within 96 hours after the offense, or who has disclosed past sexual assault by a specific individual and was in the care of that individual within the last 96 hours;

3.2.2.a. Appropriate oral and written information concerning evidence-based guidelines for the collection of evidence, depending on the sexual development of the sexual assault victim, the type of sexual offense, and the timing of the sexual offense, shall be provided to the sexual assault victim. A qualified medical provider shall educate and request consent to evidence collection of sexual assault victims who present to a health care facility with a complaint of sexual offense within 96 hours after the sexual offense;

3.2.2.b. The information required under this subsection shall be provided in person by the qualified medical provider providing medical forensic services directly to the sexual assault victim;

3.2.2.c. Following the discussion regarding the evidence-based guidelines for evidence collection in accordance with paragraph 3.2.2.a., evidence collection shall be completed at the sexual assault victim's consent.

3.2.3. Appropriate oral and written information concerning the possibility of infection or sexually transmitted infection in accordance with CDC guidelines.

3.2.4. Medically accurate written and oral information about emergency contraception in accordance with CDC guidelines;

3.2.5. Appropriate oral and written information concerning accepted medical procedures, laboratory tests, medication, and possible contraindications of that medication available for the prevention or treatment of infection or disease resulting from sexual offense;

3.2.6. After a medical forensic or physical examination, access to a shower at no cost, unless showering facilities are unavailable;

3.2.7. Photo documentation, with permission of the sexual assault victim, of the victim's injuries, anatomy involved in the offense, or other visible evidence on the sexual assault victim's body to supplement the medical forensic history and written documentation of physical findings and evidence. Photo documentation does not replace written documentation of the injury;

3.2.8. Referral by the health care facility personnel for appropriate counseling. Initial referral should be to a community-based rape crisis center;

3.2.9. With the consent of the sexual assault victim, a rape crisis center advocate shall remain in the exam room during the medical forensic examination. (See W. Va. Code §61-11A-9 (Sexual Assault Victims' Bill of Rights));

3.2.10. Written information regarding services provided by a rape crisis center and children's advocacy center, if applicable;

3.2.11. Information on drug- or alcohol-facilitated sexual offense testing, including an explanation of the comprehensive scope of a drug test or blood alcohol test, and the limited time frame within which evidence can be collected; and



3.3. If a sexual assault victim is unable to consent to medical forensic services, the services may be provided under the West Virginia Health Care Decisions Act, the Health Care Surrogate Act, or other applicable State and federal laws;

3.4. Procedures to ensure the welfare and privacy of the victim shall be followed and shall include, but not be limited to, the following:

3.4.1. A member of the health care team shall respond immediately with the goal of placing a victim in a private area within 30 minutes of arrival to ensure privacy. Upon arrival the health care team shall initiate the facility's plan for sexual assault victims. Health care personnel shall refer to victims by code to avoid embarrassment.

3.4.2. If, for any reason, the victim is incapable of receiving oral and written information required in paragraph 3.2.2.a., the information shall be given to the caregiver/guardian.

3.4.3. When a victim is in custody, or has been arrested for or convicted of a violent crime or forcible felony and continues to be in custody when the victim presents for the medical forensic exam, then if the qualified medical provider and the representative of the custodial agency, after consultation with the rape crisis center advocate, agree that it is a necessary safety precaution, the representative of the custodial agency may remain in the room. In these situations, health care facility staff shall facilitate privacy for the victim using curtains and positioning.

3.4.4. The health care facility shall call a rape crisis center advocate and shall offer to call a friend or family member to accompany the victim.

3.5. All health care facilities that provide emergency medical services to sexual assault victims shall comply with the West Virginia Crime Victims Compensation Act, West Virginia Health Care Decisions Act, and any local ordinances, municipal codes, rules, or regulations that may apply to the treatment of sexual assault victims.

3.6. Nothing in this rule creates a physician-patient relationship that extends beyond discharge from the health care facility.

3.7. The health care facility shall take all reasonable steps to secure the patient's informed written decision to consent to or decline examination and treatment.

3.8. Nothing in this rule prohibits a health care facility from treating a sexual assault victim who presents more than 96 hours following the offense.

**§149-11-4. Photo documentation.**

4.1. Photo documentation taken during a medical forensic examination shall be maintained in a confidential manner.

4.2. Photo documentation shall be stored and backed up securely in its original file format in accordance with written facility protocol.

4.3. Photo documentation of the sexual assault victim's injuries, anatomy involved in the offense, or other visible evidence on the sexual assault victim's body may be used in connection with peer review; expert second opinion; or in a criminal proceeding against a person accused of sexual offense, a juvenile

delinquency proceeding pursuant to W. Va. Code §49-4-701 *et seq.*, or an abuse and neglect investigation. Any dissemination under this subsection shall be in accordance with State and federal law.

**§149-11-5. Submitting sexual assault evidence for testing.**

5.1. The Sexual Assault Evidence Collection Kit shall be used in the manner prescribed by the information contained in that kit.

5.2. With the victim's consent, as prescribed by subsection 5.3., the kit shall be completed in acute cases if the victim presents themselves for medical forensic services within 96 hours after the sexual offense or has disclosed past sexual offense by a specific individual and was in the care of that individual within the last 96 hours.

5.3 Written Consent to the Release of Sexual Assault Evidence for Testing.

5.3.1. Prior to the medical forensic exam, the health care professional providing the medical forensic services shall provide the patient the opportunity to sign a written consent to allow the transmission of sexual assault evidence for testing or to be stored as a nonreported kit. The written consent shall be on a form included in the Sexual Assault Evidence Collection Kit.

5.3.1.a. If the victim is an adult who has a guardian, a health care surrogate, or an agent acting under a health care power of attorney, the consent of the guardian, surrogate, or agent is not required to release evidence and information concerning the sexual assault or sexual abuse. If the adult is unable to provide consent for the release of evidence and information and a guardian, surrogate, or agent under a health care power of attorney is unavailable or unwilling to release the information, then an investigating law enforcement officer may authorize the release.

5.3.1.b. After the health care professionals make a mandatory report to law enforcement, all Sexual Assault Evidence Collection Kits collected on minors under the age of 18 shall be transmitted to the West Virginia State Police Lab for testing with no consent required.

5.3.2. The health care facility shall provide the sexual assault victim with the kit tracking number and inform the victim that the kit may be tracked using the tracking kit number at [www.go.wv.gov/kit](http://www.go.wv.gov/kit).

5.3.3. The health care facility shall keep a copy of the written consent form in the patient's forensic medical record.

5.4. If an adult sexual assault victim does not consent to law enforcement involvement, the victim shall be given the opportunity to sign a written request that the kit shall be designated a nonreported kit and transmitted to the Marshall University Forensic Science Center. Sexual assault victims shall be informed in writing at the time their nonreported kit is collected that the kit shall be stored and maintained for a period of 20 years from the date the kit was collected.

5.5. If the sexual assault victim has consented to the transmission of sexual assault evidence for testing, upon collection a Sexual Assault Evidence Collection Kit shall be transmitted for testing by the health care facility to the West Virginia State Police Forensic Laboratory within 30 days of collection or as soon thereafter as practicable. All packaging kits for transmittal and transmittal protocols shall be designed to meet applicable standards for maintaining the efficacy of the sample and chain of custody.

5.6. If the sexual assault victim does not consent to law enforcement involvement, upon collection the kit shall be designated a nonreported kit and submitted by the health care facility to the Marshall University Forensic Science Center for storage.

5.7. The commission shall, in cooperation with the West Virginia State Police, develop protocols for storage of previously tested materials to be made available for secondary testing upon a court order to do so.

5.8. Biological evidence obtained through tests of Sexual Assault Evidence Collection Kits shall not be destroyed per W. Va. Code §15-9B-4(g). State and local law-enforcement agencies shall retain, preserve, and/or transfer biological evidence under conditions that are suitable for DNA testing per national best practices as identified by the SAFE Commission.

#### **§149-11-6. Laboratory Responsibilities - Receipt of sexual assault evidence by laboratory.**

6.1. Upon receiving a Sexual Assault Evidence Collection Kit, the West Virginia State Police Forensic Laboratory or a laboratory approved and designated by the Superintendent of the West Virginia State Police shall prepare a record that includes the date the sexual assault evidence was received from the health care facility, the date the evidence was reviewed, and the date the evidence was reviewed for collection quality.

6.2. After processing and testing of a Sexual Assault Evidence Collection Kit, the West Virginia State Police Laboratory shall transmit the Sexual Assault Evidence Collection Kit to the appropriate investigating state or local law-enforcement agency through any reasonable means sufficient to establish the proper chain of custody. The lack of timely submission or inadvertent loss or destruction of a Sexual Assault Evidence Collection Kit, standing alone, shall not constitute a bar to the prosecution of a sexual offense.

6.3. No Sexual Assault Evidence Collection Kit need be tested where the sexual assault victim has not consented to the testing, requests that the kit not be tested, where the sexual assault victim recants as to the allegation of a sexual offense, or the allegation that a sexual offense occurred is determined to be unfounded.

6.4. If the sexual assault victim does not consent to law enforcement involvement, the kit shall be designated a nonreported kit and transmitted to the Marshall University Forensic Science Center. Sexual assault victims shall be informed in writing at the time their nonreported kit is collected that the kit shall be stored and maintained for a period of 20 years from the date the kit was collected.

6.5. A sexual assault victim may request that the status of their kit be changed from reported to nonreported if the West Virginia State Police Crime Laboratory has not begun testing the kit. Upon execution of written request from the victim, the West Virginia State Police Crime Laboratory shall transfer the kit to the Marshall University Forensic Science Center to be stored as a nonreported kit.

6.6. A sexual assault victim may request that the status of their kit be changed from nonreported to a reported kit by authorizing the change in writing.

#### **§149-11-7. Maintenance of nonreported Sexual Assault Evidence Collection Kits.**

7.1. Sexual Assault Evidence Collection Kits transmitted to the Marshall University Forensic Science Center pursuant to subsection 6.4. shall be maintained at no cost to the victim for a period of 20 years from the date the kit was collected.

7.2. Upon receipt of a kit, the Marshall University Forensic Science Center shall confirm that the kit is a nonreported kit. If it is not, Marshall University Forensic Science Center shall arrange for the kit to be sent for testing at the WV State Police Laboratory. Similarly, if the WV State Police Laboratory receives a nonreported kit, it shall arrange for the kit to be sent to Marshall University Forensic Science Center to be stored.

7.3. After a two-year period from the date the kit was collected, if adequate storage space is not available, non-report kits shall be assessed for evidence and re-packaged from original kits into smaller containers for the remainder of the initial 20-year storage periods.

7.4. The Marshall University Forensic Science Center shall develop a detailed protocol approved by the SAFE Commission, to triage the kit, preserve any potential evidentiary materials, retain blood/urine toxicology specimens, create an electronic case file, and take an electronic photo of any packaging and unused kit materials that are disposed.

7.5. The Marshall University Forensic Science Center shall maintain a strict protocol approved by the SAFE Commission for the disposition of kits. This shall include the shredding/destruction of personal confidential information as well as the utilization of a regulated biohazardous medical waste disposal service for the disposition of any biological materials. All electronic case files on a disposed kit shall be permanently deleted.

7.6. The Marshall University Forensic Science Center shall send a notice to the sexual assault victim's last known address no fewer than 60 days prior to the date of the intended destruction or disposal of the evidence of the victim's rights under W. Va. Code §61-11A-9 (Sexual Assault Victims' Bill of Rights). The notice shall include information on the process that allows the victim to request, in writing, a ten-year extension on their kit's retention to the Marshall University Forensic Science Center, as provided in W. Va. Code §61-11A-9 (Sexual Assault Victims' Bill of Rights).