

**A Report of the Findings and Recommendations from
an Audit of Untested Sexual Assault Examination Kits in the
State of Indiana in Accordance with Senate Resolution No. 55**

**A Report Prepared by the Indiana State Police
for Submission to the Legislative Council**

November 27, 2017

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SECTION ONE

INTRODUCTION

During the 2017 legislative session, Senate Resolution Number 55 (SR55) was passed and adopted by the Indiana General Assembly. In adopting this resolution, the Indiana General Assembly “...urges the Indiana State Police to conduct a thorough audit of all untested sexual assault examination kits within the State, and that each law enforcement agency, laboratory, or healthcare facility responsible for the collection, storage, or maintenance of sexual assault kits is expected to respond to the Indiana State Police with details as to the number of untested kits possessed, and to the extent possible, the reasons that the kits remain unprocessed, and that the Indiana State Police report to the Legislative Council the findings and recommended solutions of that audit before December 1, 2017...”. A complete copy of SR55 is attached to this report and may be found in Appendix A.

There is no statutory requirement in Indiana to analyze all sexual assault examination kits. However, the Indiana State Police (ISP) affirms a historically proactive approach to raise awareness that the laboratory analysis of sexual assault examination kits may likely provide investigative benefits.

A particular goal of obtaining factual data on the number of untested kits is to aid in the development of a working statewide cooperative approach to ensure that all kits in Indiana that need to be tested are submitted for analysis, both those from a historical standpoint and also those kits collected going forward. Not all kits may require testing, such as those collected in furtherance of Indiana Code 16-21-8 that are from non-reporting victims, but most kits collected should be considered for submission to analyze as additional investigative leads, or in some instances, the identification of the perpetrator can be determined.

In January 2018, Indiana will expand the Combined DNA Index System (CODIS) to include DNA samples from not only convicted felons but also persons arrested on felony charges. CODIS is a database of DNA profiles that is maintained both at the state and federal levels. The system contains DNA profiles from crime scenes and individuals, including offenders. Profile searches are made in the system against each, and the matches provide investigative leads.

As of November 1, 2017, the Indiana CODIS database had over 270,000 convicted offender DNA samples and over 14,200 casework profiles in the system. Of significance is the fact CODIS consistently operates with a “hit rate” of 48%, which basically means that suspects or investigative leads are potentially identified in nearly half of the cases submitted with DNA evidence. The importance of submitting victim sexual assault kits for analysis with respect to the potential benefits provided by CODIS is not arguable—but rather it is probable that an investigative lead will result. CODIS searches will be expanded when the DNA collections from felony arrestees are included in the system starting in January. A more detailed report of CODIS statistics is attached to this report and may be found in Appendix B.

SECTION TWO

DATA COLLECTION METHOD

In accepting the responsibilities noted in SR55, the Indiana State Police Laboratory Division staff was tasked with compiling the data as received in order to produce this report. The Indiana State Police (ISP) also offers its sincere appreciation to the leadership of the Indiana Prosecuting Attorneys Council (IPAC) and to each participating county prosecutor for agreeing to assist in completing this task.

Prior to commencing the audit process, ISP staff consulted with the leadership of IPAC, as well as with the membership of IPAC's Indiana Statewide Sexual Assault Response Team (Statewide SART) as to the course of action to complete the audit. The ISP received input from the representatives comprising the Statewide SART that was considered for use in this report. Membership in the Statewide SART includes individuals from the following organizations:

- Hamilton County Sexual Assault Response Team
- Indiana Association of Chiefs of Police
- Indiana Chapter- International Association of Forensic Nurses
- Indiana Coalition to End Sexual Assault
- Indiana Criminal Justice Institute
- Indiana Emergency Nurses Association
- Indiana Prosecuting Attorneys Council
- Indiana Sheriff's Association
- Indiana State Police Laboratory Division
- Indianapolis-Marion County Forensic Services Agency
- Preval of Hamilton County

The ability to obtain the data for this audit was best served coming from the local level to ensure that this report would provide meaningful information toward the aim of the resolution. The results of this report are totally dependent upon the data submitted. The ISP does not have the authority or resources to mandate a physical inspection or audit by ISP personnel of every law enforcement agency, laboratory, or healthcare facility responsible for the collection, storage, and/or maintenance of evidence associated with sexual assault kits. Participation in this audit, while strongly recommended and even noted as expected in the resolution, was voluntary.

To solicit the data, with the support of IPAC, county prosecutors were asked to consult with the leadership of the county and local law enforcement agencies, as well as the medical service providers in their respective county that conduct victim sexual assault examinations, to determine an accurate accounting and audit of the total number of untested victim sexual assault kits in storage. An informational letter, along with instructions, a data collection sheet, and dispositional recommendations, from ISP Superintendent Douglas Carter was sent to IPAC for distribution to the county prosecutors. Upon receipt, IPAC sent the instructional packet to the county prosecutors on or about July 24, 2017 to start the audit process. A complete copy of the instructional packet is attached to this report and may be found in Appendix C.

Law enforcement agencies and medical service providers were to determine the total number of untested victim assault kits in storage, as well as to categorize these kits from the total number according to the instructions provided. The collected data was requested to be returned to the county prosecutor, who would compile all of the data received from the various agencies within

the county into a master data sheet. The prosecutors were asked to submit the master data sheets to the ISP by no later than Friday, October 27, 2017. The ISP completed an audit at each of the 14 ISP districts in compliance with the instructional packet for this report, and that data was included in each applicable county data in which ISP had kits in storage. Thus, all levels of Indiana law enforcement—state, county, and local—were provided the opportunity to be represented in this report.

The need to collect data on the numbers of untested kits that are being stored at medical service providers was important to capture for this report because these kits may be required at some point to be considered as evidence toward furthering a criminal charge. Chain of custody concerns and proper storage of these kits at medical service providers are issues that may have to be dealt with during discovery motions to determine the admissibility of evidence associated with these kits if left at the service provider for extended periods of time. In addition, there is a requirement in Indiana Code 16-21-8 specifying that law enforcement agencies are required to take custody of the non-reporting victim assault kits within 48 hours after receiving notice from the medical provider.

An important point to note with regard to the untested kits at medical service providers is that the kits attributed to a particular county in this report may not actually have venue in that county. With health care having become more regionalized over the last several years, plus the fact that not all service providers employ forensic nurses, or Sexual Assault Nurse Examiners (SANE), it is not uncommon for victims of assault to be referred to a service provider outside of the particular county having venue of the crime. As such, while this report documents data as received inclusive of those kits at the medical service providers, not all of those kits may be attributable to an offense in the county that has reported the kits.

In order to gain a better understanding as to the representation of the total number of untested kits in storage, officials were asked to determine the following information from the total number of untested kits: (1) how many were stored in compliance with Indiana Code 16-21-8 from non-reporting victims, commonly referred to as “Jane Doe Kits”; (2) how many were stored from false reports/no crimes; and (3) how many were stored from adjudicated court proceedings. By subtracting these groupings of kits from the total number of untested kits, a “net” number of untested kits was determined in order to provide a better evaluation of the numbers of untested kits that may require analysis. For clarity, examples of these three groupings are noted below:

- (1) Victim sexual assault kits received as evidence from medical service providers in accordance to Indiana Code 16-21-8 that are from non-reporting victims, commonly referred to as “Jane Doe Kits”, and are not to be submitted to a laboratory for analysis until such time as the victim requests an investigation. There is no investigative or prosecutorial value in testing non-reporting victim kits as no crime has been reported to law enforcement for an investigation, and these types of kits are not CODIS eligible by National DNA Index System (NDIS) rules that are governed by the Federal Bureau of Investigation (FBI).

In further explanation, these kits are evidence from an assault in which the victim seeks medical treatment and makes it known to the medical service provider that no law enforcement actions are requested. Law enforcement agencies are required to take custody

of these types of kits within 48 hours after receiving notice from the medical provider. Upon receiving these kits, the law enforcement agency is required to maintain custody for a period of one year, allowing time for the victim to decide within that one year period to involve law enforcement for an investigation.

Should a victim subsequently decide to cause an investigation by reporting to a law enforcement agency, at that point the untested "Jane Doe Kit" for that reporting victim should be considered for submission to a laboratory for analysis.

A copy of Indiana Code 16-21-8 is attached to this report and may be found in Appendix D.

- (2) Untested kits in storage that were collected in furtherance of reported crimes that were investigated and factually determined by investigative and/or prosecutorial review to be false reports/no crimes may in some instances be held untested by law enforcement as evidence to support a charge of false crime reporting or until the statute of limitations has expired. There is no investigative or prosecutorial value in testing these types of kits, and these kits are also not CODIS eligible.
- (3) Untested kits in storage from adjudicated cases may also be held by law enforcement for periods of time, to include appeals processes or possibly for an expiration of a statute of limitations on a related non-charged crime. Because these cases were adjudicated, there is no investigative or prosecutorial value in always submitting these kits for analysis. For such case related scenarios, the following are examples that may be of use in clarifying:
 - Three victims reported being assaulted, and each victim identified the same suspect as having committed the crimes. Each victim sought medical treatment and victim assault kits were collected. The suspect was subsequently located and criminally charged. Since each victim identified the same suspect, one of the kits from the victims was submitted for laboratory analysis for evidentiary purposes, as the remaining two untested kits would not necessarily provide any additional investigative or prosecutorial leads beyond the analysis of the one kit that was tested, which resulted in the DNA profile of the offender.
 - A victim reported being assaulted and sought medical treatment that resulted in the collection of a victim assault kit. Based upon the details of the assault as provided to investigators by the victim, the kit would not contain DNA from the suspect. The suspect was criminally charged and subsequently convicted of the assault based upon the testimony of the victim and other evidence associated with the crime. Because the facts of the incident made it known that the analysis of this kit would not result in a DNA profile from the offender, the submission of this kit would have provided no additional investigative or prosecutorial leads with the assault, and the results could cause jury members questions as why there was no foreign DNA profile attributable to the offender.

While these two scenarios were provided for demonstrative purposes for this report, the events noted could occur. In each of these examples, one can recognize that it was important for a victim assault kit to be collected for potential laboratory analysis, but each kit in these investigations did not necessarily require testing for a disposition of the charges.

After subtracting from the total number of untested kits those non-reporting victims, false crime/no crime reports, and adjudicated cases, a “net” number of untested kits was determined from the total. This net number of kits provided the grouping of untested kits in which the circumstances do not immediately provide an explanation as to why a kit was not submitted for analysis. While there may be many explanations, one such being that the untested kit may have been collected at a time when DNA testing was primitive and the statute of limitations may have since expired, it is definitely this net number that should be the focus for this audit. It is from this group of untested kits that CODIS may be of particular value in providing additional investigative leads or even the identity of the perpetrator for the case at-hand, and CODIS may link other cases that may be related to the case at-hand with other jurisdictions across the nation.

While there may be some valid investigative and/or prosecutorial reasons to not submit these kits for analysis, the idea that the case may be part of a larger scale associated to other crimes should not be overlooked when these decisions are made in furtherance of an investigation. Serial offenders are known to some, not known to others. As noted previously, the importance of submitting victim sexual assault kits for analysis with respect to the potential benefits provided by CODIS is not arguable—rather it is probable that an investigative lead will result.

SECTION THREE

DATA SUMMARY

The data compiled in this report is presented as it was received. The Indiana State Police is not affirming the veracity of this data, as these were self-audits and with voluntary compliance to the resolution.

- There were 91 counties that participated by submitting data for this report. This represents a 99% response from the 92 counties in the State of Indiana.
- From the submitted data, there were 93 untested kits reported to be in the custody of medical service providers.
- There were a total of 5396 untested kits reported in the custody of law enforcement.
 - From this total number of untested kits, 416 were attributed to being from non-reporting or “Jane Doe” kits, and
 - 1669 were noted as from no crime/false report kits, and
 - 751 were reported as being from adjudicated cases.
- Thus, the “net” number of untested kits in Indiana was reported to be 2560.

The laboratory does not serve as a long-term evidence storage facility. As such, there are no reportable backlogs of untested kits to include in this report. Assault kits are submitted for analysis whereby the kits are received, coded for assignment, and placed in the work flow. As of the writing of this report, there have been 779 assault kits received for analysis at the ISP labs in 2017, and the average age of biology cases in the laboratory system is 43 days.

A complete listing of the data reported by county is attached to this report and may be found in Appendix E. When reviewing this data, there are some points to clarify to ensure the reported data on the spreadsheet is understood:

- The “blank” or empty spaces found in the spreadsheet indicates that no data was received to include in those particular cells.
- The single asterisk (*) attributed to a county notes that upon receiving the data from those particular counties it was made known that not all agencies within the county reported data toward the totals.
- The double asterisk (**) attributed to Marion County notes the data received is not the total number of untested kits in storage, and as such the Marion County submission is not reported consistent with the other counties. Instead, the Marion County data as received for inclusion in this report was submitted as being a representation of the untested kits in Marion County in only the year 2015, and it was presented as an average number of the untested kits in Marion County for each year during the last 10 years.

SECTION FOUR
RECOMMENDATIONS

The following bullets are recommendations associated with the results of this report. Not all of these bullets may be applicable in each county, but these points may serve as a foundation toward improvements with the handling, storing, and testing of victim assault kits in Indiana.

- Indiana Prosecuting Attorneys Council's (IPAC) Indiana Statewide Sexual Assault Response Team (Statewide SART) should consider using the reported data toward assisting those particular counties, or regions of counties, that do not currently have a SART in place and have large numbers of untested kits, with developing a local or regional SART in order to facilitate a more collaborative and multidisciplinary approach toward the investigation of sexual assaults in Indiana.
- The inclusion of additional forensic nurses, or Sexual Assault Nurse Examiners (SANE), at medical service providers, in particular at the more rural providers, may assist in more effective and efficient victim care toward the investigation of sexual assaults, to include the collection and processing of assault kits.
- Law Enforcement should consider implementing case management processes in which an independent person (first line supervisor, investigative supervisor, etc.) and not the assigned investigators review all investigations to determine when a case should be closed or continued and to ensure that all required laboratory services have been considered.
- Law Enforcement should consider implementing evidence management practices to include annual evidence status reviews during which appropriate decisions may be made with respect to storage, analysis, destruction, etc. for all items of evidence held in secure storage.
- Victim sexual assault kits received as evidence of a crime should be considered for submission to the laboratory for analysis, except in the following two circumstances:
 - Non-reporting victim sexual assault kits received from medical providers in accordance to Indiana Code 16-21-8, commonly referred to as "Jane Doe Kits", shall not be submitted to the laboratory for analysis until such time as the victim requests an investigation, and
 - Victim sexual assault kits received as evidence in which the investigation factually determines, inclusive of an independent case review by a supervisor and/or prosecutor that no crime or a false crime report was committed prior to the scheduling of the kits for delivery to the laboratory.
- Law enforcement should consider reviewing those untested victim assault kits in evidence storage, in cooperation with the local prosecutor, attributed to historical investigations that have been adjudicated to determine if there is potential value in submitting those kits for analysis with respect to developing investigative leads in other unsolved cases.

- Law enforcement should consider reviewing those untested victim assault kits in evidence storage attributed to historical investigations that may have been closed at only the discretion of law enforcement with no independent case review by a supervisor and/or prosecutor to determine if there is potential value in submitting the kits for analysis for the likelihood of obtaining additional leads to pursue for the case at-hand, or possibly in other unsolved cases.
- The ISP Laboratory Division will continue assisting those law enforcement agencies who undertake internal historical case reviews in establishing specific kit submission schedules in order to provide a prioritized means for testing those kits that may be identified as needing to be analyzed.
- The Indiana Criminal Justice Community should consider using the United States Department of Justice report recently published by the National Institute of Justice that is entitled, *“National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach”* toward a review of current practices in Indiana associated with the investigation of sexual assaults. This report notes that it *“...outlines best practices that can improve the quality of evidence collection and streamline processes in the submission and analysis of sexual assault kits, all while keeping victims at the center of a trauma-informed, multidisciplinary response to sexual assault...”* (page 77). The recommendations in this report are not mandated for use; some are already in use; and some may not be applicable to the Indiana Criminal Justice Community, but they may provide some guidance toward initiating the development of consistent approaches toward the investigation of sexual assaults, inclusive of the analysis of kits.

The Executive Summary from the *“National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach”* is attached to this report and may be found in Appendix F. The entire report is available for review at the following link:

<https://www.nij.gov/topics/law-enforcement/investigations/sexual-assault/Pages/national-best-practices-for-sexual-assault-kits.aspx>

Appendix “A”

Senate Resolution No. 55

April 19, 2017

SENATE RESOLUTION No. 55

DIGEST OF RESOLUTION

A SENATE RESOLUTION urging the Indiana State Police to conduct a thorough audit of all untested sexual assault examination kits in the State and provide a report of the findings and recommendations to the Legislative Council before December 1, 2017.

**Crider, Houchin, Merritt, Mrvan,
Stoops**

April 10, 2017, read first time and referred to Committee on Rules and Legislative Procedure.
April 18, 2017, reported favorably — Do Pass.

SR 55—RR 3561/DI HE



April 19, 2017

First Regular Session 120th General Assembly (2017)

SENATE RESOLUTION No. 55

MADAM PRESIDENT:

I offer the following resolution and move its adoption:

1 A SENATE RESOLUTION urging the Indiana State Police
2 to conduct a thorough audit of all untested sexual assault
3 examination kits in the State and provide a report of the
4 findings and recommendations to the Legislative Council before
5 December 1, 2017.

6 *Whereas, There are an undetermined number of untested*
7 *sexual assault examination kits in the State of Indiana;*

8 *Whereas, When tested, sexual assault examination kit*
9 *evidence can identify an unknown assailant, link crimes*
10 *together, and identify serial offenders;*

11 *Whereas, Sexual assault examination kit evidence can*
12 *confirm the presence of a known suspect, affirm the survivor's*
13 *account, discredit the suspect, and exonerate the innocent;*

14 *Whereas, Before the State of Indiana can begin addressing*
15 *the issue of the unknown number of untested sexual assault*
16 *examination kits, the number of untested kits must first be*
17 *determined;*

18 *Whereas, The testing of untested sexual assault*

SR 55—RR 3561/DI HE



1 *examination kits is essential to the administration of justice in*
2 *the State of Indiana; and*

3 *Whereas, It is fitting that the Indiana General Assembly*
4 *urges the Indiana State Police to conduct an audit of all*
5 *untested sexual assault examination kits in the State of Indiana*
6 *and provide a report of the findings and recommended*
7 *solutions of that audit to the Legislative Council before*
8 *December 1, 2017: Therefore,*

9 *Be it resolved by the Senate of the*
10 *General Assembly of the State of Indiana:*

11 SECTION 1. That the Indiana General Assembly urges the
12 Indiana State Police to conduct a thorough audit of all untested
13 sexual assault examination kits within the State, and that each
14 law enforcement agency, laboratory, or healthcare facility
15 responsible for the collection, storage, or maintenance of sexual
16 assault kits is expected to respond to the Indiana State Police
17 with details as to the number of untested kits possessed, and to
18 the extent possible, the reasons that the kits remain
19 unprocessed, and that the Indiana State Police report to the
20 Legislative Council the findings and recommended solutions of
21 that audit before December 1, 2017.

22 SECTION 2. The Secretary of the Senate is hereby directed
23 to transmit a copy of this Resolution to the Indiana State Police,
24 Governor Eric Holcomb, Michelle Kuiper, The Joyful Heart
25 Foundation, and the Indiana Coalition to End Sexual Assault.

SR 55—RR 3561/DI HE



COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Resolution No. 55, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said resolution DO PASS.

(Reference is to SR 55 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 11, Nays 0

SR 55—RR 3561/DI HE



Appendix “B”

Combined DNA Index System Statistics
Indiana State Police Laboratory Division

CODIS Statistics

11/1/2017

1.	Total number of Investigations Aided by the Indiana CODIS program at the State and National levels	6,143
2.	Number of Indiana cases link to a potential suspect (offender) by a CODIS match	
	a. Homicide (including attempted murder and death investigation)	168
	b. Sexual Assault (including child molestation, other sex crimes, and rape)	773
	c. Burglary/Theft	2,823
	d. Robbery	281
	e. Misc. (including arson, battery, criminal recklessness/mischief, and drug)	365
	f. Unknown (Marion Co. Crime Lab cases)	513
3.	Number of Indiana convicted offender samples analyzed and in CODIS	>270,000
4.	Number of Indiana convicted offender samples pending analysis	~100
5.	Number of casework profiles currently being searched	~14,200
6.	Percent of unsolved Indiana cases that have been involved in a hit	48%
7.	Estimated number of convicted offender samples that will be collected by the Indiana Department of Corrections	3,300/year
8.	Estimated number of convicted offender samples that will be collected in the county program	5,300/year

Appendix “C”

Audit Instruction Packet

INDIANA STATE POLICE

INDIANA GOVERNMENT CENTER NORTH
100 NORTH SENATE AVENUE

INDIANAPOLIS, INDIANA 46204-2259

www.State.in.us/isp

July 24, 2017

Greetings:

During the 2017 legislative session, Senate Resolution Number 55 (SR55) was passed and adopted by the Indiana General Assembly. In adopting this resolution, the Indiana General Assembly "...urges the Indiana State Police to conduct a thorough audit of all untested sexual assault examination kits within the State, and that each law enforcement agency, laboratory, or healthcare facility responsible for the collection, storage, or maintenance of sexual assault kits is expected to respond to the Indiana State Police with details as to the number of untested kits possessed, and to the extent possible, the reasons that the kits remain unprocessed, and that the Indiana State Police report to the Legislative Council the findings and recommended solutions of that audit before December 1, 2017...". To accomplish the tasks noted in SR55, the Indiana State Police Laboratory Division will compile data from such an audit in order to produce a findings report before the December 1st deadline.

I want to offer my sincere appreciation to the leadership of the Indiana Prosecuting Attorneys Council (IPAC) and to each county prosecutor for agreeing to assist us in accomplishing this important task. The ability to readily obtain the data required in this audit is best served coming from the local level to ensure that the audit provides meaningful information toward the aim of the resolution.

In addition to this audit, in January 2018 Indiana will expand the Combined DNA Index System (CODIS) to include DNA samples from not only convicted felons but to also include persons arrested on felony charges. CODIS is a database of DNA profiles that is maintained both at the state and federal levels. The system contains DNA profiles from crime scenes and individuals, including offenders. Profile searches are made in the system against each, and the matches provide investigative leads.

Currently, the Indiana CODIS database has over 260,000 offender DNA samples and over 13,000 casework profiles in the system. Of glaring significance is the fact CODIS operates with a "hit rate" of nearly 48%, which basically means that suspects or leads are potentially identified in nearly half of the cases submitted with DNA evidence. The importance of submitting victim sexual assault kits for analysis with respect to potential benefits provided by CODIS is not arguable—but rather is probable that an investigative lead will result. This fact will only be enhanced when the DNA collections from felony arrestees are included in the system starting in January.

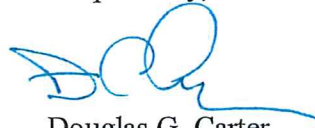
A national conversation is taking place on the issue of untested victim sexual assault kits, and there has been legislation passed in some states that mandate the submission of *all* kits for laboratory analysis. In Indiana, while there is no such statutory requirement, we are reaffirming our proactive approach to raise awareness that the laboratory analysis of sexual assault kits may likely provide investigative benefits.

In agreeing to conduct this audit, we are opting to garner factual data about the numbers of untested kits to potentially develop a working statewide cooperative approach to ensure that all kits that need to be tested are submitted for analysis, both those from a historical standpoint and also those kits collected going forward. Not all kits may require testing, such as those collected in furtherance of Indiana Code 16-21-8 that are from non-reporting victims, but we believe that most kits collected should be considered for submission for analysis.

Enclosed you will find a copy of SR55 for your review. In addition, attached is a set of instructions for use toward completing the audit in your particular county, as well as a data sheet for use in reporting the requested information to our laboratory staff. I have also provided a recommendation sheet for use in decisions associated with the dispositions and future collections of victim assault kits that may be of value to you, as well as your law enforcement partners, toward operational needs.

I am hopeful that this information, in particular the value of submission with respect to CODIS, will be beneficial for your needs in relation to the national issue currently underway with untested kits and with the audit we are completing. Should you have any questions associated with the audit, you may contact our laboratory staff at (317) 921-5301. I thank you for your cooperation in this important matter.

Respectfully,



Douglas G. Carter
Superintendent

SDH

Senate Resolution No. 55

"A SENATE RESOLUTION urging the Indiana State Police to conduct a thorough audit of all untested sexual assault examination kits in the State and provide a report of the findings and recommendations to the Legislative Council..."

Audit Instructions

1. Prosecutors are asked to consult with the leadership of the county and local law enforcement agencies in their county to determine an accurate accounting and audit of the total number of untested victim sexual assault kits within the county per the instructions below:
 - Determine total number of untested victim assault kits in evidence storage at the county and local law enforcement agencies. Report the total number of untested kits combined from all of the agencies on the attached data sheet.
 - From the total number of untested kits, determine how many are being stored in compliance with Indiana Code 16-21-8, commonly referred to as "Jane Doe Kits", which are transferred to law enforcement by medical service providers for a one year storage. These kits are from those victims who do not wish to involve law enforcement for an investigation. Report the total number of these types of kits combined from all of the agencies on the attached data sheet.
 - From the total number of untested kits, determine how many are being stored in conjunction with investigations that determined that no crime or a false crime report was committed. Report the total number of these types of kits combined from all of the agencies on the attached data sheet.
 - From the total number of untested kits, determine how many are being stored in conjunction with adjudicated court proceedings. Report the total number of these types of kits combined from all of the agencies on the attached data sheet.
2. Prosecutors are asked to consult with the hospital/medical service provider in their county that conducts the victim sexual assault examinations to determine the total number of untested victim assault kits those providers have in their possession and report that number.
3. When the inventories and audits have been completed, and the total numbers of kits have been documented on the data sheet, prosecutors are asked to email their completed data sheet to the Indiana State Police at assaultkitsurveys@isp.in.gov. The deadline for submission is by no later than close of business on **Friday, October 27, 2017**. Questions may be directed to the email address or by calling the Indiana State Police Laboratory Division at (317) 921-5301.

Senate Resolution No. 55

"A SENATE RESOLUTION urging the Indiana State Police to conduct a thorough audit of all untested sexual assault examination kits in the State and provide a report of the findings and recommendations to the Legislative Council..."

County Audit Data Sheet

Email to: assaultkitsurveys@isp.in.gov by October 27, 2017

County of Audit:	
Total number of untested victim assault kits in evidence storage:	
From the total number, the number of which are non-reporting "Jane Doe" kits:	
From the total number, the number of which are from no crime/false reports:	
From the total number, the number of which are from adjudicated court proceedings:	
Total number of untested victim assault kits at hospital/medical service provider:	

Questions may be directed to the email address above or by calling the Indiana State Police Laboratory Division at (317) 921-5301.

Recommendations for Disposition of Untested Victim Sexual Assault Kits

In an effort to provide guidance toward the disposition of untested victim sexual assault kits that are being held in law enforcement evidence storage, the following points may provide assistance and be of value in making decisions associated with the storage of these types of untested kits:

- All victim sexual assault kits received as evidence of a crime should be submitted to the laboratory for analysis, except in the following two circumstances:
 1. Non-reporting victim sexual assault kits received from medical providers in accordance to Indiana Code 16-21-8, commonly referred to as “Jane Doe Kits”, shall not be submitted to the laboratory for analysis until such time as the victim requests an investigation.
 - “Jane Doe Kits” are evidence from an assault in which the victim makes it known to the medical provider that no law enforcement actions are requested.
 - Upon receiving these types of kits, the law enforcement agency is required to maintain custody for a period of one year, allowing time for a victim to decide within that one year period to involve law enforcement for an investigation. These types of kits may be destroyed after the one year period of time has passed, provided the victim did not request an investigation to be initiated at any point during that year.
 - Should a victim subsequently decide to cause an investigation, at that point the untested “Jane Doe Kit” for that reporting victim should be submitted to the laboratory for analysis.
 2. Victim sexual assault kits received as evidence in which the investigation factually determines that no crime or a false crime report was committed prior to the scheduling of the kits for delivery to the laboratory. The untested kits associated with these circumstances should not be submitted for analysis, as there is no evidentiary value in conducting the analysis.
- Those untested victim assault kits in evidence storage attributed to historical investigations that have been adjudicated should be reviewed in cooperation with the local prosecutor to determine if there is potential value in submitting those kits for analysis with respect to developing investigative leads in other unsolved cases.
- Those untested victim assault kits in evidence storage attributed to historical investigations that may have been closed at the discretion of law enforcement without submitting the kits for analysis should be reviewed to consider the likelihood of obtaining additional leads to pursue from the analysis of the kits for the case at-hand, or possibly in other unsolved cases.

April 19, 2017

SENATE RESOLUTION No. 55

DIGEST OF RESOLUTION

A SENATE RESOLUTION urging the Indiana State Police to conduct a thorough audit of all untested sexual assault examination kits in the State and provide a report of the findings and recommendations to the Legislative Council before December 1, 2017.

**Crider, Houchin, Merritt, Mrvan,
Stoops**

April 10, 2017, read first time and referred to Committee on Rules and Legislative Procedure.
April 18, 2017, reported favorably — Do Pass.

SR 55—RR 3561/DI HE



April 19, 2017

First Regular Session 120th General Assembly (2017)

SENATE RESOLUTION No. 55

MADAM PRESIDENT:

I offer the following resolution and move its adoption:

1 A SENATE RESOLUTION urging the Indiana State Police
2 to conduct a thorough audit of all untested sexual assault
3 examination kits in the State and provide a report of the
4 findings and recommendations to the Legislative Council before
5 December 1, 2017.

6 *Whereas, There are an undetermined number of untested*
7 *sexual assault examination kits in the State of Indiana;*

8 *Whereas, When tested, sexual assault examination kit*
9 *evidence can identify an unknown assailant, link crimes*
10 *together, and identify serial offenders;*

11 *Whereas, Sexual assault examination kit evidence can*
12 *confirm the presence of a known suspect, affirm the survivor's*
13 *account, discredit the suspect, and exonerate the innocent;*

14 *Whereas, Before the State of Indiana can begin addressing*
15 *the issue of the unknown number of untested sexual assault*
16 *examination kits, the number of untested kits must first be*
17 *determined;*

18 *Whereas, The testing of untested sexual assault*

SR 55—RR 3561/DI HE



1 examination kits is essential to the administration of justice in
2 the State of Indiana; and

3 *Whereas, It is fitting that the Indiana General Assembly*
4 *urges the Indiana State Police to conduct an audit of all*
5 *untested sexual assault examination kits in the State of Indiana*
6 *and provide a report of the findings and recommended*
7 *solutions of that audit to the Legislative Council before*
8 *December 1, 2017; Therefore,*

9 *Be it resolved by the Senate of the*
10 *General Assembly of the State of Indiana:*

11 SECTION 1. That the Indiana General Assembly urges the
12 Indiana State Police to conduct a thorough audit of all untested
13 sexual assault examination kits within the State, and that each
14 law enforcement agency, laboratory, or healthcare facility
15 responsible for the collection, storage, or maintenance of sexual
16 assault kits is expected to respond to the Indiana State Police
17 with details as to the number of untested kits possessed, and to
18 the extent possible, the reasons that the kits remain
19 unprocessed, and that the Indiana State Police report to the
20 Legislative Council the findings and recommended solutions of
21 that audit before December 1, 2017.

22 SECTION 2. The Secretary of the Senate is hereby directed
23 to transmit a copy of this Resolution to the Indiana State Police,
24 Governor Eric Holcomb, Michelle Kuiper, The Joyful Heart
25 Foundation, and the Indiana Coalition to End Sexual Assault.

SR 55—RR 3561/DI HE



COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Resolution No. 55, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said resolution DO PASS.

(Reference is to SR 55 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 11, Nays 0

SR 55—RR 3561/DI HE



Appendix “D”

Indiana Code 16-21-8

IC 16-21-8

Chapter 8. Emergency Services to Sex Crime Victims

IC 16-21-8-0.1

Repealed

(As added by P.L.41-2007, SEC.6. Repealed by P.L.161-2014, SEC.10.)

IC 16-21-8-0.2

Definitions

Sec. 0.2. The following definitions apply throughout this chapter:

(1) "Division" refers to the victim services division of the Indiana criminal justice institute established by IC 5-2-6-8(a).

(2) "Evidence" means the results collected from a forensic medical examination of a victim by a provider.

(3) "Provider" means a hospital or licensed medical services provider that provides forensic medical exams and additional forensic services to a victim.

(4) "Sample" means the result collected from a forensic medical examination of the victim by a provider, when the victim has not yet reported the sex crime to law enforcement.

(5) "Secured storage" means a method of storing a sample that will adequately safeguard the integrity and viability of the sample.

(6) "Sexual assault examination kit" means the standard medical forensic examination kit for victims of sexual assault developed by the state police department under IC 10-11-2-33.

(7) "Sexual assault nurse examiner" means a registered nurse who:

(A) has received training to provide comprehensive care to sexual assault survivors; and

(B) can:

(i) conduct a forensic medical examination; and

(ii) collect evidence from a sexual assault victim.

As added by P.L.161-2014, SEC.11.

IC 16-21-8-0.3

Repealed

(As added by P.L.41-2007, SEC.7. Repealed by P.L.161-2014, SEC.12.)

IC 16-21-8-0.5

Repealed

(As added by P.L.90-2005, SEC.4. Amended by P.L.41-2007, SEC.8. Repealed by P.L.161-2014, SEC.13.)

IC 16-21-8-0.6

Repealed

Indiana Code 2016

(As added by P.L.90-2005, SEC.5. Amended by P.L.121-2006, SEC.22; P.L.41-2007, SEC.9. Repealed by P.L.161-2014, SEC.14.)

IC 16-21-8-0.7

Repealed

(As added by P.L.90-2005, SEC.6. Amended by P.L.41-2007, SEC.10. Repealed by P.L.161-2014, SEC.15.)

IC 16-21-8-0.8

Repealed

(As added by P.L.41-2007, SEC.11. Repealed by P.L.161-2014, SEC.16.)

IC 16-21-8-0.9

Repealed

(As added by P.L.41-2007, SEC.12. Repealed by P.L.161-2014, SEC.17.)

IC 16-21-8-1

Forensic medical exams and additional forensic services; rules; enumeration of sex crimes

Sec. 1. (a) A hospital licensed under IC 16-21-2 that provides general medical and surgical hospital services shall provide forensic medical exams and additional forensic services to all alleged sex crime victims who apply for forensic medical exams and additional forensic services in relation to injuries or trauma resulting from the alleged sex crime. To the extent practicable, the hospital shall use a sexual assault examination kit to conduct forensic exams and provide forensic services. The provision of services may not be dependent on a victim's reporting to, or cooperating with, law enforcement.

(b) For the purposes of this chapter, the following crimes are considered sex crimes:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2) (repealed).
- (3) Child molesting (IC 35-42-4-3).
- (4) Vicarious sexual gratification (IC 35-42-4-5).
- (5) Sexual battery (IC 35-42-4-8).
- (6) Sexual misconduct with a minor (IC 35-42-4-9).
- (7) Child solicitation (IC 35-42-4-6).
- (8) Child seduction (IC 35-42-4-7).
- (9) Incest (IC 35-46-1-3).

(c) Payment for services under this section shall be processed in accordance with rules adopted by the victim services division of the Indiana criminal justice institute.

As added by P.L.2-1993, SEC.4. Amended by P.L.47-1993, SEC.7; P.L.36-1997, SEC.7; P.L.121-2006, SEC.23; P.L.41-2007, SEC.13; P.L.158-2013, SEC.228; P.L.214-2013, SEC.15; P.L.161-2014, SEC.18.

IC 16-21-8-1.1

Forensic medical examinations without consent of the examinee

Sec. 1.1. (a) A provider may conduct a forensic medical examination without the consent of the person who is the subject of the examination, or the consent of another person authorized to give consent under IC 16-36-1-5, if the following conditions are met:

(1) The person:

(A) does not have the capacity to provide informed consent under IC 16-36-1; and

(B) is, based on the medical opinion of the health care provider, incapable of providing consent within the time for evidence to be collected through a forensic medical examination.

(2) The provider has a reasonable suspicion that the person may be the victim of a sex crime.

(3) A person authorized to give consent under IC 16-36-1-5 is:

(A) not reasonably available; or

(B) the suspected perpetrator of the sex crime.

(b) A provider is immune from civil liability for conducting a forensic medical examination without consent in accordance with this section unless performance of the forensic medical examination constitutes gross negligence or willful or wanton misconduct.

As added by P.L.161-2014, SEC.19.

IC 16-21-8-1.5

Appointment of a sexual assault response team

Sec. 1.5. If a sexual assault response team has not been established in a county, the prosecuting attorney shall appoint a sexual assault response team in that county, or the county shall join with one (1) or more other counties to create a regional team, to comply with duties assigned to sexual assault response teams under this chapter.

As added by P.L.41-2007, SEC.14.

IC 16-21-8-2

County or regional sexual response team; duties

Sec. 2. (a) Each county or regional sexual assault response team shall develop a plan that establishes the protocol for sexual assault victim response and treatment, including the:

(1) collection;

(2) preservation;

(3) secured storage; and

(4) destruction;

of samples.

(b) The plan under subsection (a) shall address the following regarding an alleged sexual assault victim who is at least eighteen (18) years of age and who either reports a sexual assault or elects not to report a sexual assault to law enforcement:

- (1) The method of maintaining the confidentiality of the alleged sexual assault victim regarding the chain of custody and secured storage of a sample.
- (2) The development of a victim notification form that notifies an alleged sexual assault victim of his or her rights under the law.
- (3) How a victim will receive the victim notification form.
- (4) Identification of law enforcement agencies that will be responsible to transport samples.
- (5) Agreements between medical providers and law enforcement agencies to pick up and store samples.
- (6) Maintaining samples in secured storage.
- (7) Procedures to destroy a sample following applicable statute of limitations.

As added by P.L.2-1993, SEC.4. Amended by P.L.121-2006, SEC.24; P.L.41-2007, SEC.15.

IC 16-21-8-3

Forensic medical exams and additional forensic services; consent

Sec. 3. A physician or sexual assault nurse examiner who provides forensic medical exams and additional forensic services shall provide the forensic medical exams and additional forensic services to an alleged sex crime victim under this chapter with the consent of the alleged sex crime victim.

As added by P.L.2-1993, SEC.4. Amended by P.L.121-2006, SEC.25; P.L.41-2007, SEC.16.

IC 16-21-8-4

Assistance in development and operation of forensic medical exams and additional forensic services

Sec. 4. The victim services division of the Indiana criminal justice institute shall assist in the development and operation of programs that provide forensic medical exams and additional forensic services to alleged sex crime victims, and if necessary, provide grants to hospitals for this purpose.

As added by P.L.2-1993, SEC.4. Amended by P.L.47-1993, SEC.8; P.L.121-2006, SEC.26.

IC 16-21-8-5

Payment of forensic medical exams; requirements; suspension

Sec. 5. (a) The division shall award compensation or reimbursement under this chapter for forensic medical exams.

(b) The division is not required to award compensation or reimbursement under this chapter for additional forensic services unless the following conditions are met:

- (1) The victim is at least eighteen (18) years of age.
- (2) If the victim is less than eighteen (18) years of age, a report of the sex crime must be made to child protective services or a

law enforcement officer.

(3) The sex crime occurred in Indiana.

If the division finds a compelling reason for failure to comply with the requirements of this section, the division may suspend the requirements of this section.

(c) A claim filed for services provided at a time before the provision of the forensic medical exams and additional forensic services for which an application for reimbursement is filed is not covered under this chapter.

As added by P.L.2-1993, SEC.4. Amended by P.L.47-1993, SEC.9; P.L.90-2005, SEC.7; P.L.121-2006, SEC.27; P.L.41-2007, SEC.17.

IC 16-21-8-6

Services without charge; reimbursement

Sec. 6. (a) When a provider provides forensic medical exams and additional forensic services under this chapter to a victim, the provider shall furnish the services without charge.

(b) When a provider provides additional forensic services under section 5(b) and 5(c) of this chapter, the provider shall furnish the services without charge.

(c) The division shall reimburse a provider for the cost for providing services and shall adopt rules and procedures to provide for reimbursement.

(d) The application for reimbursement must be filed not more than one hundred eighty (180) days after the date the service was provided.

(e) The division shall approve or deny an application for reimbursement filed under subsection (b) not more than one hundred twenty (120) days after receipt of the application for reimbursement.

(f) A provider may not charge the victim for services required under this chapter despite delays in reimbursement from the division.
As added by P.L.2-1993, SEC.4. Amended by P.L.47-1993, SEC.10; P.L.36-1997, SEC.8; P.L.90-2005, SEC.8; P.L.121-2006, SEC.28.

IC 16-21-8-7

Abortion services not required

Sec. 7. This chapter does not require a hospital to provide a service related to an abortion.

As added by P.L.2-1993, SEC.4.

IC 16-21-8-9

Duties of a provider; delayed implementation

Sec. 9. (a) Prior to the discharge of a victim from the hospital, a provider shall:

- (1) require the victim to sign a form that notifies the victim of his or her rights under this chapter;
- (2) provide a copy of the signed form to the victim; and
- (3) inform law enforcement that the sample is available.

(b) The director of the Indiana criminal justice institute may delay the implementation of this section until the earlier of the following:

- (1) A date set by the director.
- (2) The date funding becomes available by a grant through the criminal justice institute or by an appropriation from the general assembly.

If the director of the criminal justice institute delays implementation of this section, the director shall notify the prosecuting attorney of each county of the director's action and when funding become available to implement this section.

As added by P.L.41-2007, SEC.18.

IC 16-21-8-10

Law enforcement duty to transport a sample to secured storage; victim notification; county plans

Sec. 10. (a) Law enforcement shall:

- (1) obtain the sample within forty-eight (48) hours after receiving a provider's notification; and
- (2) transport the sample to secured storage.

(b) Law enforcement shall keep the sample in secured storage until the earlier of the following:

- (1) At least one (1) year after the date the sample is placed in secured storage.
- (2) The victim reports the sex crime to law enforcement and the sample is transported to the crime lab for investigation and use as evidence.

(c) The division shall notify the victim, as described in subsection (d), that the victim's sample will be removed from secured storage and may be destroyed if the victim does not report the sex crime to law enforcement on or before the date described in subsection (b)(1).

(d) The notice the division is required to provide a victim under subsection (c) shall be sent:

- (1) by first class mail to the individual's last known address;
- (2) by electronic mail to the individual's last known electronic mail address; and
- (3) six (6) months and thirty (30) days before the date described in subsection (b)(1).

(e) Each county shall develop and implement a plan for the secured storage of samples.

(f) The director of the Indiana criminal justice institute may delay the implementation of this section until the earlier of the following:

- (1) A date set by the director.
- (2) The date funding becomes available by a grant through the criminal justice institute or by an appropriation from the general assembly.

If the director of the criminal justice institute delays implementation of this section, the director shall notify the prosecuting attorney of each county of the director's action and when funding becomes

available to implement this section.

(g) The failure to comply with:

(1) this chapter;

(2) a plan adopted by a county; or

(3) a protocol adopted by a sexual assault response team;

does not, standing alone, affect the admissibility of a sample as evidence in a criminal or civil proceeding.

As added by P.L.41-2007, SEC.19.

Appendix “E”

Data Reported by County

Data Reported by County

COUNTY	# Untested at Medical	# Untested in Evidence	# Jane Doe Non-Reporting	# No Crime/False Report	# from Adjudicated Cases	Net # of Untested Kits
ADAMS	0	15	2	8	5	0
ALLEN	0	772	26	449	282	15
BARTHOLOMEW	0	80	6	65	5	4
BENTON	0	0	0	0	0	0
BLACKFORD	0	0	0	0	0	0
BOONE	0	83	0	70	13	0
BROWN	0	0	0	0	0	0
CARROLL	0	1	0	1	0	0
CASS	0	33	0	24	9	0
CLARK	0	130	0	22	8	100
CLAY	0	34	1	24	1	8
CLINTON	0	17	0	8	9	0
CRAWFORD	0	3	0	3	0	0
DAVISS	5	50	0	8	37	5
DEARBORN		18	0	9	0	9
DECATUR	0	14	5	6	3	0
DEKALB	0	34	1	9	1	23
DELAWARE	13	237	20	2	0	215
DUBOIS	5	31	0	26	5	0
ELKHART	0	136	0	38	19	79
FAYETTE	0	18	0	14	3	1
FLOYD	5	67	0	65	2	0
FOUNTAIN	0	2	0	2	0	0
FRANKLIN	0	0	0	0	0	0
FULTON	0	23	1	7	7	8
GIBSON	13	37	0	5	0	32
GRANT	0	30	5	2	0	23
GREENE	0	21	2	3	1	15
HAMILTON	0	67	14	34	5	14
HANCOCK	0	25	0	15	2	8
HARRISON	0	15	14	1	0	0
HENDRICKS	0	36	2	26	5	3
HENRY	1	43	5	22	7	9
HOWARD	0	45	0	14	1	30
HUNTINGTON	0	28	1	17	9	1
JACKSON	0	23	1	6	9	7
JASPER	0	32	4	4	14	10
JAY	0	18	5	11	2	0
JEFFERSON	0	38	0	5	0	33
JENNINGS	0	1	0	1	0	0

Data Reported by County

COUNTY	# Untested at Medical	# Untested in Evidence	# Jane Doe Non- Reporting	# No Crime/False Report	# from Adjudicated Cases	Net # of Untested Kits
JOHNSON	3	123	17	77	8	21
KNOX	0	115	1	7	32	75
KOSCIUSKO	0	136	4	96	19	17
LAGRANGE	0	0	0	0	0	0
LAKE*	0	257	9	7	3	238
LAPORTE	0	144	6	67	51	20
LAWRENCE	0	57	1	2		54
MADISON*	0	198	0	1	0	197
MARION**	44	413	96	15	46	256
MARSHALL	0	28	1	10	7	10
MARTIN	0	1	0	0	0	1
MIAMI	1	1	0	1	0	0
MONROE	0	160	83	1	0	76
MONTGOMERY	0	5	1	1	0	3
MORGAN	0	123	1	87	30	5
NEWTON	0	6	0	4	0	2
NOBLE	0	42	0	17	16	9
OHIO		0	0	0	0	0
ORANGE	0	2	0	0	0	2
OWEN		18	3	0		15
PARKE	0	21	0	1	7	13
PERRY	1	0	0	0	0	0
PIKE	1	1	0	0	1	0
PORTER	0	83	23	25	19	16
POSEY	0	25	0	11	0	14
PULASKI*	0					0
PUTNAM	0	16	1	3	1	11
RANDOLPH	0	5	0	1	4	0
RIPLEY	0	8	4	4	0	0
RUSH	0	29	0	10	10	9
SCOTT	0	21	0	0	4	17
SHELBY	1	1	0	1	0	0
SPENCER	0	7	0	5	2	0
STARKE	0	6	0	4	0	2
ST. JOSEPH	0	512	13	21		478
STEUBEN	0	39	1	34	4	0
SULLIVAN	0	5	0	1	0	4
SWITZERLAND	0	1	0	1	0	0
TIPPECANOE	0	76	18	17	2	39
TIPTON	0	0	0	0	0	0

Data Reported by County

COUNTY	# Untested at Medical	# Untested in Evidence	# Jane Doe Non-Reporting	# No Crime/False Report	# from Adjudicated Cases	Net # of Untested Kits
UNION	0	2	0	1	0	1
VANDERBURGH	0	212	8	31		173
VERMILLION	0	0	0	0	0	0
VIGO	0	144	3	14	0	127
WABASH	0	11	0	8	3	0
WARREN	0	0	0	0	0	0
WARRICK						0
WASHINGTON	0	30	0	20	10	0
WAYNE	0	7	2	3	1	1
WELLS	0	2	1	1	0	0
WHITE	0	26	4	20	2	0
WHITLEY	0	20	0	13	5	2
TOTALS	93	5396	416	1669	751	2560

The “blank” or empty spaces found in the spreadsheet indicates that no data was received to include in those particular cells.

The single asterisk (*) attributed to a county notes that upon receiving the data from those particular counties it was made known that not all agencies within the county reported data toward the totals.

The double asterisk (**) attributed to Marion County notes the data received is not the total number of untested kits in storage, and as such the Marion County submission is not reported consistent with the other counties. Instead, the Marion County data as received for inclusion in this report was submitted as being a representation of the untested kits in Marion County in only the year 2015, and it was presented as an average number of the untested kits in Marion County for each year during the last 10 years.

Appendix “F”

Executive Summary from the National Institute of
Justice’s Report - “*National Best Practices for Sexual
Assault Kits: A Multidisciplinary Approach*”



National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach



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The National Institute of Justice is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance; the Bureau of Justice Statistics; the Office for Victims of Crime; the Office of Juvenile Justice and Delinquency Prevention; and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking.

Opinions or conclusions expressed in this paper are those of the authors and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Sexual Assault Forensic Evidence Reporting (SAFER) Act Working Group



The SAFER Working Group was developed to address the SAFER (Sexual Assault Forensic Evidence Reporting) Act of 2013, which recommends, in part, the development of best practices and protocols for the collection and processing of DNA evidence in sexual assault cases.¹

The SAFER Working Group, which convened over the course of more than two years, consisted of subject matter experts empaneled by the National Institute of Justice (NIJ) and representing victims, victim advocates, sexual assault nurse examiners, medical examiners, forensic laboratories, law enforcement agencies, prosecutors, and the judiciary. The working group considered issues relating to evidence collection; prioritization of evidence and time periods for collection; evidence inventory, tracking, and auditing technology solutions; investigative and policy considerations; and communication strategies. With the diversity of backgrounds and views, the SAFER Working Group successfully reached substantial agreement on a variety of complex issues.

A draft of this document was also posted for public comment in August 2016 and received a litany of generally positive feedback along with a number of extremely helpful suggestions. All of the comments were considered, deliberated, and ultimately used to strengthen the document. The recommendations in this document are not mandated by any governing body; they are provided as recommended best practices based on research, well-established processes from other disciplines, extensive professional experience of the working group members, and input from the public.

¹ The Sexual Assault Forensic Evidence Reporting Act of 2013 (SAFER Act), P.L. 113-4, § 1002, (a)(1).

Summary of Recommendations

The SAFER Working Group developed 35 recommendations through a consensus process. Although the working group acknowledges that every jurisdiction is different, the intent of the following recommendations is to positively impact sexual assault responses and the experiences of victims and to ultimately result in safer communities.

Chapter 1: Multidisciplinary Approach

1. A collaborative multidisciplinary approach should be implemented for sexual assault cases.
2. Sexual assault responders should use a victim-centered and trauma-informed approach when engaging with victims of sexual assault.
3. Agencies should collaborate and involve victim advocates early in the process to create a more victim-centered approach to the criminal justice process.
4. The multidisciplinary approach should seek out and include voices from underserved or vulnerable populations in the community's response to sexual assault cases.

Chapter 2: The Medical-Forensic Exam and Sexual Assault Evidence Collection

5. Establish minimum standards for a national sexual assault kit (SAK); until that time, states and territories should create a standardized SAK for sexual assault cases that addresses the minimum criteria in the National Adults/Adolescents Protocol.²
6. The medical-forensic exam should be performed by a health care professional specifically trained in the collection of evidence relating to sexual assault cases such as a sexual assault nurse examiner or other appropriately trained medical professional.

² Office on Violence Against Women, *The National Protocol for Sexual Assault Medical Forensic Examinations—Adults/Adolescents* (2nd Ed.) (Washington, DC: U.S. Department of Justice, 2013), hereinafter referred to as the "National Adults/Adolescents Protocol." https://safetasource.site-ym.com/resource/resmgr/Protocol_documents/SAFE_PROTOCOL_2012-508.pdf.

7. Guided by the victim history, sexual assault samples should be collected from any victim seeking care as soon as possible and up to five (5) days or longer post-assault. Regardless of the time frame, reimbursement should be provided for the medical-forensic exam.
8. Examiners should concentrate the collection of evidentiary samples by using no more than two swabs per collection area so as not to dilute the biological sample.
9. Sample collection should be an option for all sexual assault victims who present for a medical-forensic exam, including those who choose not to report (unreported) or report anonymously.
10. Suspect sample collection should ideally be completed by a medical-forensic examiner or appropriately trained individual.
11. Due to increased sensitivity in DNA technologies, masks and gloves should be used by all medical-forensic care providers and others in the collection and packaging of evidence, especially during the collection of intimate samples.
12. Policies for medical-forensic record retention should be created in accordance with statutes of limitations and other criminal justice needs rather than with traditional parameters for medical record keeping, storage, retention, and destruction.

Chapter 3: Transparency and Accountability of Law Enforcement for SAKs

13. Law enforcement agencies and laboratories should partner to use one evidence tracking system.
14. The federal government should develop an Electronic Evidence Exchange Standard for the data standards associated with physical forensic evidence.
15. SAKs should be received by the local law enforcement agency from the hospital or clinic as soon as possible, ideally, no later than three (3) business days from the collection of the kit, or as specified by statute.
16. Law enforcement agencies should submit the SAK to the laboratory for analysis as soon as possible, ideally, no later than seven (7) business days from the collection of the SAK, or as specified by statute.
17. Law enforcement or laboratories should be responsible for the long-term storage of all SAKs, unless applicable law provides otherwise.
18. A comprehensive inventory should be conducted to determine the number, status, location, and individual descriptive information (e.g., unique kit identifier, date collected) for all SAKs.
19. Law enforcement agencies should perform an annual audit verifying that all SAKs in the property room are present and in their specified location.

Chapter 4: Investigative Considerations

20. All SAKs that the victim has consented to reporting to law enforcement should be submitted to the laboratory for DNA analysis.
21. Law enforcement agencies should establish a system of accountability to ensure the timely follow-up on CODIS hits.
22. All law enforcement personnel involved in sexual assault investigations should receive training in the neurobiology of trauma and specialized skills for interviewing sexual assault victims.
23. Law enforcement agencies should implement electronic records management systems that incorporate investigative workflows to improve case investigations and communication.

Chapter 5: Processing Sexual Assault Kits in the Laboratory

24. With the goal of generating a CODIS-eligible DNA profile, if a laboratory is unable to obtain an autosomal CODIS-eligible DNA profile, the laboratory should evaluate the case to determine if any other DNA-typing results could be used for investigative purposes.
25. Forensic laboratories should have an evidence submission policy/protocol that includes prioritization of evidentiary items.
26. Laboratories should consider the volume of sexual assault cases and use business process improvement tools to review their input/output, identify where bottlenecks occur, and determine if a high-throughput approach to processing will achieve efficiencies.
27. Laboratories should consider changing the order of processing the evidence by going to *Direct to DNA* and then, only if needed, proceed to serology.
28. Laboratories should consider incorporating robotics and/or automation at each step of the DNA process for the most efficient high-throughput approach.
29. Laboratories should consider the use of standardized reporting templates, a paperless system, and specialized software to assist in the interpretation of DNA mixtures, to streamline interpretation and reporting of DNA results.

Chapter 6: Post-Analysis Communication and Policy Considerations

30. Jurisdictions should have a victim notification protocol for informing victims of the status of their sexual assault cases, including cases where SAKs are analyzed after many years.

31. Jurisdictions that do not have evidence retention laws should adopt biological evidence retention policies/protocols that are victim-centered and preserve evidence from uncharged or unsolved reported cases for 50 years or the length of the statute of limitations, whichever is greater.
32. Unreported SAKs should be retained for at least the statute of limitations or a maximum of 20 years.
33. States that have not already done so should consider eliminating the statute of limitations for sexual assaults.
34. Jurisdictions should develop a communication strategy to increase transparency and accountability to stakeholders within their communities regarding the response to sexual violence.
35. Mandatory training for those responding to sexual assault should be incorporated into every agency's strategic plan.