

Sexual Assault Victims' DNA Bill of Rights and the Role of the Emergency Physician
An Information Paper

The Public Health and Injury Prevention Committee was assigned an objective as a result of Amended Council Resolution 30(14) Sexual Assault Victims' DNA Bill of Rights.

RESOLVED, That ACEP members be encouraged to be familiar with and to follow all local law, policy, and procedure with respect to collection and submission of DNA evidence to law enforcement agencies; and be it further

RESOLVED, That ACEP support state legislative "Sexual Assault Victims' DNA Bill of Rights" and similar initiatives regarding timely processing of submitted DNA evidence

Action: Assigned to the Public Health & Injury Prevention Committee. Assigned second resolved to the State Legislative/Regulatory Committee for state advocacy initiatives.

In response to the resolution, the committee developed an information paper to inform members about this issue.

The Rape, Abuse & Incest National Network (RAINN) [reports](#) that every 107 seconds another American is sexually assaulted. The [US Department of Justice, Criminal Victimization, 2014](#) report noted 284,350 rapes/sexual assault crimes in 2014 alone. DNA evidence is one tool that can aid in prosecuting and convicting sexual assault criminals. Unfortunately, much of the DNA evidence that is collected is sitting, untested, on shelves across the United States. When properly tested and entered into the national database, Combined DNA Index System (CODIS), the rape kit results can aid prosecutors in convicting rapists and help identify serial rapists. Early apprehension of serial offenders can prevent crime, potentially saving \$12.9 billion a year in avoided medical costs, lost wages, and other harms suffered by victims and society.

Emergency physicians often perform sexual assault exams and are charged with collecting the DNA evidence. Therefore, emergency physicians should be aware of local, state, and national laws regarding collection and storage of DNA evidence. As patient advocates, emergency physicians can champion and support state initiatives such as the "Sexual Assault Victims' DNA Bill of Rights" that address the proper analysis of DNA and provide victims the right to be informed of the processing status of their rape kits.

According to the [National Center of Victims of Crime](#), rape kits can be classified as untested or backlogged. An untested kit remains in law enforcement custody and has not been sent for analysis. Some kits sit in storage for extended periods of time and may date back to the 1980s. A backlog refers to a kit that has been sent for laboratory testing but has not been processed. In most jurisdictions testing is not required and must be requested by law enforcement.

Current Problems and How They Affect Victims

The [FBI estimates that in 2013 there were 79,770 rapes](#). [A July 2015 report by USA Today](#) found the following:

- 70,000 rape kits remain untested in 1,000 police departments
- There are 18,000 police jurisdictions in the United States
- 34 states do not have an inventory of untested evidence
- 44 states do not have guidelines for police on when to test

The backlog of untested DNA evidence from rape kits is astounding. Not only is there a known backlog of untested kits sitting on laboratory shelves awaiting processing, but an unknown number of kits are still in law enforcement custody, awaiting transfer to a laboratory. The lack of public resources in the face of rapidly progressing forensic science has led to piles of untested biological evidence in cities around the country.

Once these kits are processed, the DNA profile is entered into the FBI DNA database, CODIS. DNA evidence from rape cases not only helps law enforcement officers identify rapists in existing unsolved cases, but also prevents future assaults and spares potential new victims by bringing perpetrators to justice early in their criminal careers.

While survivors should have a right to follow the processing of their forensic evidence— (where it is and what is, or is not, being done with it) – many of them are unaware of the status of their evidence analysis. (The National Center for Victims of Crime: Sexual Assault Kit Backlogs: Survivor Perspectives). This backlog creates a delay in the entire processing of their case, delaying litigation and sometimes even preventing litigation due to the statute of limitations. The justice system is failing these survivors, prolonging their emotional stress, and preventing the healing that comes with closure and justice.

Sexual Assault Evidence DNA Testing Laws and Regulations

In the United States, laws and regulations pertaining to DNA testing of evidence collected during sexual assault examination are classified in three ways. Geographically, these regulations may be state-enacted laws or codes (the majority), they may fall under federal jurisdiction, or they may be enacted by local city or county ordinance. More broadly, these laws or regulations may be categorized as record keeping (audits, inventories, and tracking of currently tested and untested kits); victims' rights, pertaining to testing and notification of the process; legal mandates for government-funded testing; and laws that extend the usual statutes of limitations for the prosecution of sexual assault crimes in cases where the identity of the person who allegedly committed the offense is later identified through DNA collected at the time of the offense. Additionally, federal legislation provides funding for DNA record keeping, audits, and testing through grants under federal legislation such as The [Sexual Assault Forensic Evidence Reporting Act of 2013](#) (*SAFER Act*) which ties reauthorization of monies linked to the [Violence Against Women Act](#) (VAWA) and amends the federal act known as the [Debbie Smith Act](#) to create grants to audit the sexual assault kit backlog. The attached table organizes these laws by location and type and provides the reference links.

Proposed Solutions and Advocacy Efforts

The backlog of sexual assault kit processing is a complex problem, and addressing it requires a multifaceted approach. Therefore, not only should funding be ensured to clear current backlogs but also to address current and future capacity to process kits in a timely manner, thus preventing future backlogs.

Lack of process transparency contributes to the number of untested and backlogged kits. To date, the exact number of kits waiting to be processed is not known, and hence, there is no clear understanding of the magnitude of this problem. Mandatory reporting of backlogs by states would highlight the extent of the problem. A 2011 National Institute of Justice report, "[The Road Ahead: Unanalysed Evidence in Sexual Assault Cases.](#)" provides an overview of the issues.

The status of their kits' testing should be made transparent to victims. Currently, victims are unaware of the status of their kits. A system needs to be implemented that would allow victims to be updated on the status of their kits while they are being processed. Not only will this have the potential to move things along, but it can also bring peace of mind to each victim to be able to follow the progression of his/her own case.

Lastly, awareness of these issues should be increased through open dialogues with local, county and state representatives and stakeholders. Through transparency and advocacy, justice can be achieved for these victims.

State and Federal Legislation:

Sexual Assault Kit Testing and the Rights of Victims

California

In 2003, California passed the “Sexual Assault Victims' DNA Bill of Rights,” the first law of its kind in the nation. This legislation addresses the issue of the importance of timely DNA analysis of rape kit evidence and provides sexual assault victims with the right to be informed of the status of the testing of their kits and whether or not a match has been identified.

California Codes Title 17 Section 680 [Sexual Assault Victims' DNA Bill or Rights.](#)

[California Bill 1517 Mandatory Sexual Assault Kit Testing](#)

Amends the “Sexual Assault Victims' DNA Bill of Rights,” to require law enforcement to submit sexual assault forensic evidence to the crime lab within five days of receipt. The crime lab must test and enter resulting DNA profiles into CODIS within 30 days. Currently, California law requires that a victim be notified if law enforcement elects not to test DNA within the prescribed time limits only in cases where the identity of the perpetrator is at issue. This bill revises current law to require notification in any case where DNA is not tested, regardless of whether the perpetrator's identity is at issue.

San Francisco Administrative Code

[SEC. 2A.89. Implementing the California Sexual Assault Victims' DNA Bill or Rights.](#)

This ordinance requires the police chief to develop protocol aimed at achieving: 1) the collection of rape kits from health care providers within 72 hours; and 2) the completion of DNA testing within 14 days of receipt. The ordinance also creates the Police DNA Testing in Sexual Assault Cases Account, an account that receives general and grant money, money gifts, and any other funds to ensure timely testing of rape kits. This ordinance was enacted on December 6, 2010.

California Bill 1517 amends the “[Sexual Assault Victims' DNA Bill of Rights.](#)” to require law enforcement to submit sexual assault forensic evidence to the crime lab within five days of receipt. The crime lab must test and enter resulting DNA profiles into CODIS within 30 days. Currently, California law requires that a victim be notified if law enforcement elects not to test DNA within the prescribed time limits only in cases where the identity of the perpetrator is at issue. This bill revises current law to require notification in any case where DNA is not tested, regardless of whether the perpetrator's identity is at issue. This bill was enacted by the [California Legislature, 2013-2014 Regular Session.](#)

Colorado

[House Bill 13-1020](#)

[Concerning Evidence Collected in Connection with Sexual Assault](#)

DNA Victims' Rights and Victim Notification

Colo. Rev. Stat. § 24-33.5-113.

Colorado House Bill 1020 requires the Department of Public Safety to create rules governing forensic evidence (DNA evidence) collected in a sexual assault investigation. Specifically, the bill requires that forensic testing be done in sexual assault cases if requested by a victim, and the forensic evidence must be submitted to an accredited crime laboratory within 21 days after the forensic evidence is received by a law enforcement agency. Additionally, the bill would require law enforcement agencies to submit an inventory of untested sexual assault kits in active investigations to the Colorado Bureau of Investigations which must submit a plan to analyze all of the unanalyzed sexual assault forensic evidence in inventory. The bill requires law enforcement agencies to inform the victim of the purpose of the submission of the forensic evidence and obtain the written consent of the victim before the release. This bill became law on June 5, 2013.

Hawaii

[House Concurrent Resolution No 99 H.D. 1 2012](#)

Requesting the Department of the Attorney General to work with stakeholders and appropriate agencies to create an efficient tracking method for DNA rape kits.

This bill requires the Attorney General and county police departments to coordinate with other states and federal law enforcement agencies to create an efficient tracking method for DNA rape kits. Additionally, the Attorney General must submit a report to the 2013 – 2014 Legislature, including the status of its effort in creating an efficient tracking method; potential sources of additional funding for the Honolulu Police Department Crime Laboratory; and other recommendations, including any proposed legislation.

Illinois

[§ 725 ILCS 202/5](#). Mandatory Sexual Assault Kit Testing:

This law, the first of its kind in the country (September 2010), mandates submission and testing of all sexual assault evidence. It requires law enforcement agencies to submit sexual assault evidence kits to the Illinois State Police (ISP) within 10 days of receiving the kits, and requires ISP to analyze the kits within 10 days. The law also requires all law enforcement agencies to provide ISP with an inventory of the untested kits in their possession.

Louisiana

[RS 15:622- Sexual Assault Collection Kits](#)

This law requires agencies that store sexual assault kits to inventory all untested kits in their possession by January 1, 2015. By March 1, 2015, the state police crime lab must submit a report detailing the number of untested in each parish. The bill was signed into law on May 16th, 2014, and became effective on August 1st, 2014.

Michigan

[House Bill No. 5445 – 2014 Mandatory Sexual Assault Kit Testing](#)

On June 26, 2014, Michigan's Governor approved HB 5445, "The Sexual Assault Kit Evidence Submission Act." This act establishes standards and procedures for the collection and analysis of sexual assault kits, including requiring law enforcement to submit kits to the laboratory within 14 days of receipt from a health care facility.

Ohio

[Substitute Senate Bill Number 316](#) Mandatory Sexual Assault Kit Testing. To amend sections 109.573 and 2933.82 of the Revised Code

Under Senate Bill 316, law enforcement agencies would be required to review all cases in their possession and forward untested rape kits to the Bureau of Criminal Identification and Investigation or other crime laboratory for DNA analysis within one year. The governor signed this bill into law on December 19, 2014.

Texas

[Gov't Code § 420.041-.043, .0735, Senate Bill 1636](#) DNA Victims' Rights and Victim Notification:

Texas S.B. 1636 amends Chapter 420 the Texas Government Code to require law enforcement to submit rape kits to a laboratory within 30 days of receipt. The law also allows department laboratories to contract out to private accredited laboratories to expedite testing. S.B. 1636 requires that, when requested, the department compare results from a newly tested rape kit with DNA information in the state's database and CODIS. The law also makes rape kits confidential and, with a few exceptions, limits their release without the written consent of an appropriate party. Lastly, the law requires the Department of Public Safety to report the number of untested kits and submit a report with a projected timeline for completing the testing on all sexual assault kits.

Tennessee

[HB1373](#) Tennessee Pub. Ch. 733 requires law enforcement agencies to inventory and submit a report detailing the number of stored, untested kits by July 1, 2014. By September 1, 2014, the Tennessee Bureau of Investigation is required to submit a report to the legislature detailing the number of untested kits by county. This law was signed into law on May 16th, 2014.

[Tenn. Code Ann. § 40-2-104](#) (Senate Bill 831) allows prosecutors to begin a case against an offender who can only be identified by DNA evidence and, therefore, prevent the statute of limitations from expiring on the case. Presently, DNA evidence is not sufficient under Tennessee law to begin a prosecution of a suspect identified by DNA evidence only. This bill was passed on April 29, 2013.

Utah

[House Bill 157](#) DNA Victims' Rights and Victim Notification

This bill expands the rights of victims of sexual assault. The bill provides victims with a right to be informed when a DNA profile is obtained, the profile is entered into the Utah Combined DNA Index System, or the profile results in a match. A victim may also designate a representative to receive such notifications. The victim must also be notified if law enforcement decides not to submit their kit for testing or intends to dispose of their kit. This bill was enacted March 26, 2014.

Virginia

[Senate Bill 658](#)

This bill requires that local and state law enforcement must inventory all sexual assault kits that have not been submitted for analysis before July 1, 2014. The Department of Forensic Science must submit the results of this inventory to the General Assembly by July 1, 2015. This bill was signed into law April 4, 2014.

Wisconsin

[Wisconsin: 175.405](#) Mandatory Sexual Assault Kit Testing

Sexual assault; evidence where no suspect has been identified. (1) In this section, "law enforcement agency" has the meaning given in s. 165.83 (1) (b). (2) Whenever a Wisconsin law enforcement agency collects, in a case of alleged or suspected sexual assault, evidence upon which deoxyribonucleic acid analysis can be performed, and the person who committed the alleged or suspected sexual assault has not been identified, the agency shall follow the procedures specified in s. 165.77 (8) and shall, in a timely manner, submit the evidence it collects to a crime laboratory, as identified in s. 165.75.

Federal Acts

[42 U.S. Code § 14135 - The Debbie Smith DNA Backlog Grant Program](#)

The Debbie Smith Act 2004 (42 U.S.C. 13701) provides United States federal government grants to eligible states and units of local government to conduct DNA analyses of backlogged DNA samples collected from victims of crimes and criminal offenders. The Act expands the Combined DNA Index System (CODIS) and provides legal assistance to survivors of dating violence. Named after sexual assault survivor Debbie Smith, the Act was passed by the 108th Congress as part of larger legislation, the Justice for All Act of 2004 (P.L. 108-405), and signed into law by President George W. Bush on October 30, 2004. The Act amends the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135), the DNA Identification Act of 1994 (42 U.S.C. 14132) and the Violence Against Women Act of 2000. The Act was reauthorized in 2008, extending the availability of DNA backlog reduction program grants, DNA evidence training and education program grants, and sexual assault forensic exam program grants through fiscal year 2014.

The Sexual Assault Forensic Evidence Reporting Act of 2013 ([SAFER Act](#)) became law on March 7, 2013 as Title X of the reauthorization of the Violence Against Women Act (VAWA) (113 P.L. 4).

The SAFER Act amended the Debbie Smith Act (42 U.S.C. 14135) to create grants to audit the sexual assault kit backlog, providing that between 5% and 7% of funding authorized under the Debbie Smith Act be allocated for audits of the sexual assault kit backlog.

Developed by members of the ACEP Public Health and Injury Prevention Committee, January 2016

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