

Legislative Budget and Finance Committee
Sexual Assault Evidence Collection

Report Presentation by Dr. Maryann Nardone at February 27, 2018, Meeting

Good morning. Senate Resolution 2017-75 directed the Legislative Budget and Finance Committee to study the extent to which rape kits remain unprocessed in the Commonwealth and reasons kits remain untested as part of the Commonwealth's Sexual Assault Evidence Collection Program.

We found:

In view of national concerns about untested rape kits and the lack of official estimates of such kits, the Pennsylvania General Assembly enacted Act 2015-27 amending the Commonwealth's Sexual Assault Testing and Evidence Collection Act to identify the state's "backlog" of untested sexual assault evidence kits (SAKs) in the possession of local law enforcement agencies and forensic laboratories awaiting forensic testing for 12 months or more.

Rape and sexual assault crimes are traumatic, uniquely personal violent crimes, and behind each case is a person whose life has been irrevocably altered. Reporting a sexual assault can take considerable toll on victims in the form of further emotional trauma, humiliation, fear or actuality of retaliation, loss of privacy,

and lost wages. During sexual victimization, victims lose control over what is done to them. From their perspective, the reporting and investigation of the assault itself can feel like an extension of the loss of control over one's life. To support victims' ability to cope with the trauma and regain a sense of control over what is done to them, a victim-centered response is required from health care providers and law enforcement responders.

In part, to provide such an approach, the Act provides for certain victim rights, including the requirement that the victim give specific consent to testing the rape kit. It also provides for prompt collection and securing of rape kits from health care facilities by local law enforcement agencies where the incident occurred to establish and preserve a chain of evidence for the crime, along with standards for maintenance and provision of such evidence to forensic labs that meet the FBI's standards for National DNA Index System (NDIS) participation.

To identify Pennsylvania's "backlog" of kits in the possession of local law enforcement agencies and forensic labs, we reviewed the reports they filed with the Pennsylvania Department of Health (DOH) and the Pennsylvania State Police (PSP) on their backlog as of September and December 31, 2015, and December 31, 2016. We found that law enforcement agencies serving almost 90 percent of the state's municipalities (899 agencies serving 2,245 municipalities) filed reports in January 2017. Typically, municipalities not included in the 2017 report are small

boroughs or second class townships, and a substantial number of these receive services through contracted police agencies.

We also found that statewide the number of backlogged kits declined from 2015 through 2016. At the end of December 2015, there were about 1,900 reported backlogged sexual assault kits in the possession of law enforcement agencies and forensic labs. By the end of 2016, the number had dropped to just over 1,200, for a net reduction of almost 700 backlogged kits, even with the increased reporting from 2015 (432) to 2016 (899).

Two federal programs specifically targeted to reducing the rape kit backlog nationally have provided support/assistance to eliminate the equivalent of 60 percent (1,128 of 1,898) of Pennsylvania's rape kit backlog as of December 31, 2015. In October of 2017, the City of Philadelphia was also awarded about an additional \$1 million to, in part, complete analysis of all untested sexual assault kits in the possession of the police department that had been "deactivated" due to the lack of a DNA request from investigators or the District Attorney's Office.

While not specifically targeted to rape kit backlog reduction, the state's three forensic labs that meet FBI standards to participate in NDIS also receive federal DNA Capacity Enhancement and Backlog Reduction Program funds. The Pennsylvania State Police has also made procedural changes to in part emulate some of the

National Institute of Justice best practice recommendations for testing of sexual assault kits. In September 2017, moreover, PSP's Bureau of Forensic Services hired five new staff, including two in DNA. Eleven additional staff, including six in DNA, are planned. The full impact on the number of cases in the lab awaiting testing and average turnaround time may not be immediately apparent as such staff require training before their full impact can be measured. According to the PSP, the recommended six-month timeframe for testing SAKs for incidents occurring after 2015 is reasonable assuming adequate resources are available to the forensic lab for processing of all types of required cases.

As noted in the report some local law enforcement agencies, including the PSP, reported an increase in their backlog from 2015 through 2016. We contacted each of the local law enforcement agencies with more than one rape kit increase from 2015 through 2016, and found that more than half (25 of 43) were kits where the victim had not given consent for forensic testing and/or the victim subsequently reported a crime had not occurred, or the district attorney declined to prosecute.

About another 40 percent (16 of 43) involved kits that had been accepted by the FBI for testing as part of a national program and were being held for the assigned submission date. In other words, most of the increase in the reported backlog counts involved kits that do not meet Act 27's criteria for backlogged kits awaiting testing.

The PSP in response to our request also examined the increase in its reported backlog, and similarly found misreporting of its backlog. Such misreporting included kits from closed cases that were being kept for expiration of the applicable statute of limitations, kits that had been previously tested, and kits that had been done by medical examiners as part of homicide investigations that were not sexual assault investigations.

Based on this analysis, the PSP has identified a need for improved instructions for the annual survey of backlogged kits. Its revised instructions will apply to the Pennsylvania State Police and local law enforcement agencies statewide, which should help address the problem of misreporting.

During the course of our study, with the assistance of the Pennsylvania Coalition Against Rape (PCAR), we attempted to identify instances where local law enforcement agencies were not collecting rape kits from hospitals. One health care system and one hospital responded to PCAR's request. As noted in the report, along with the Pennsylvania State Police we followed up on each of these reports. The uncollected rape kits that were identified involved situations not specifically addressed in statute (e.g., incidents that occurred out-of-state with victims served in Pennsylvania health care facilities) and victims seeking to remain anonymous and not wishing to request an investigation. In the cases that were brought to our attention, we

learned of no cases where local law enforcement refused to collect a rape kit for a victim wishing to come forward and requesting an investigation.

The Pennsylvania Department of Health has revised its recommended consent form to assure that victims/patients freely consent to forensic testing of their rape kits. Beyond what is provided for in statute, sexual assault response teams in some communities also have developed local programs to preserve evidence for victims that initially choose to remain anonymous so as to support them if they later decide to report the crime to law enforcement. Such locally tailored programs address issues associated with the privacy of health records under federal law and the need to effectively maintain a chain of evidence while offering a victim-centered approach to rape crisis service and investigation.

We thank Rachel Levine, MD, Pennsylvania's Physician General and the Acting Secretary of Health. In particular, from the Pennsylvania State Police, we thank Major James Raykovitz, Director, Bureau of Forensic Services; Joanna Reynolds, Chief Counsel; Deborah Calhoun, Director, Scientific Services Division, Bureau of Forensic Services; and Andrew Lovette, Assistant Counsel.