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Sexual Assault Evidence Collection

Conducted Pursuant to Senate Resolution 2017-75

February 2018

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Summary

Senate Resolution 2017-75 directed the Legislative Budget & Finance Committee study the extent to which rape kits remain unprocessed in the Commonwealth. It also directed us to identify the 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 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 Act¹ to identify the state's "backlog" of untested sexual assault evidence kits (SAKs) in the possession of law enforcement.*** Rape and sexual assault crimes are traumatic, uniquely personal violent crimes, and behind each case is a person whose life has been irrevocably altered. According to the U.S. Department of Justice (USDOJ):

Reporting a sexual assault can take considerable toll on some victims in the form of further emotional trauma, humiliation, fear or actuality of retaliation, loss of privacy, having one's personal life scrutinized, lost wages when work is missed to deal with matters related to the case, transportation, and child care costs related to participating in the legal process, and more.²

Despite the significant toll on victims reporting such crimes, victims have not always had their rape kits tested by forensic laboratories to identify the DNA of the perpetrator. To help assure each victim's rape kit undergoes such testing, Act 2015-27 provided for:

- An initial and then annual census or inventory of "backlogged" kits (i.e., those held for 12 months or more) in the possession of the Commonwealth's local law enforcement agencies and forensic laboratories, and annual public reporting on the "backlog."
- 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.
- Standards for maintenance and provision of such evidence to forensic laboratories meeting national standards for participation in the National DNA Index System (NDIS).

¹ Act 2006-165, as amended; 35 P.S. §10172.1 et seq.

² U.S. Department of Justice, *Sexual Assault Kit Testing Initiatives and Non-Investigative Kits*, January 2017.

- Certain victim rights related to testing of the rape kit.

The Pennsylvania Department of Health (DOH) conducted the first survey of the volume of kits backlogged in early September 2015 and on December 31, 2015, and published the survey's results in April 2016. With considerable assistance from the Pennsylvania State Police (PSP), the second survey was conducted for kits backlogged as of December 31, 2016, with survey results published in April 2017.

- ***For the 2017 report, law enforcement agencies filed sexual assault evidence backlog reports for almost 90 percent of Pennsylvania municipalities.*** When we compared the Department of Community and Economic Development (DCED) statewide municipal police database with the reports received by the Pennsylvania State Police on behalf of DOH, we found:
 - The 899 reporting Pennsylvania's law enforcement agencies served 2,245 of the state's 2,560 municipalities.³
 - One-quarter (17 of 67) of the counties had reports covering all municipalities in the county, and over half (35 of 67) had missing reports for no more than two municipalities.
 - For the most part, municipalities not included in the 2017 published report were small boroughs or second class townships, and a substantial number of these received police services through contracted police agencies.
- ***For the most part, Pennsylvania local law enforcement agencies and forensic laboratories reported reduced sexual assault kit backlogs from 2015 through 2016.*** As of the end of December 2015, there were about 1,900 reported backlogged sexual assault evidence kits in the possession of local law enforcement agencies and forensic laboratories. By the end of December 2016, the number of reported backlogged kits dropped to just over 1,200, for a net reduction of almost 700 backlogged rape kits.⁴ Philadelphia accounted for the largest share of the rape kit inventory as of September 2015 (1,574 of 3,179 kits) and the largest share of the net change in the rape kit backlog from 2015 through 2016 (593 of the 684 net backlog reduction).
- ***Two national programs specifically targeted to reducing the national backlog of untested rape kits have made available support/assistance to eliminate***

³ According to DCED, Pennsylvania has more police departments than any other state in the country. In Pennsylvania, moreover, many municipalities receive primary police services from the Pennsylvania State Police.

⁴ The net reduction in backlogged kits understates the total reduction from 2015 through 2016. In total, 1,041 backlogged kits were tested or no longer met the statute's criteria for backlogged kits by the end of calendar year 2016. It also understates the total reduction as it does not take into account the effect of the increase in the number of local law enforcement agencies reporting on their backlog for the first time for calendar year 2016. Of the 357 newly reported backlogged kits at the end of calendar year 2016, first time reporters accounted for more than one-third of such backlogged rape kits.

what is effectively the equivalent of 60 percent (1,128 of 1,898) of Pennsylvania's rape kit backlog as of December 31, 2015.

- The New York County DA Sexual Assault Kit Backlog Elimination Program (DANY)⁵ provided the Allegheny County Medical Examiner and the Philadelphia Police Department with funding to test 1,000 backlogged rape kits.
- The National Institute of Justice SAK Partnership Program⁶ received or approved for receipt 128 rape kits from 12 Pennsylvania local law enforcement agencies.⁷
- ***The state's three forensic laboratories approved to participate in the National DNA Index System (NDIS) also participate in the federal DNA Capacity Enhancement and Backlog Reduction (CEBR) Program.*** While not limited exclusively to rape kit testing, this federal formula grant program made available over \$2 million for federal fiscal year 2016 to Pennsylvania's laboratories.⁸ In part, such federal funds are being used to support:
 - The Allegheny County Office of the Medical Examiner working a minimum of 142 additional backlogged cases from January 1, 2017, to December 31, 2018.
 - The Philadelphia Police Department Office of Forensic Science Criminalistics Unit working at least 880 cases by the end of 2018.
 - The Pennsylvania State Police, Bureau of Forensic Services replacing and upgrading existing equipment and funding overtime for serology personnel and DNA personnel to process, analyze, and review backlog cases or backlog data samples.⁹
- ***In October 2017, the City of Philadelphia also received a National Sexual Assault Initiative (SAKI) program grant.*** The approximately \$1 million federal grant will be used to complete analysis of all untested sexual assault kits in the

⁵ Civil forfeiture funds from international banks in New York have been used to fund this program. Such funds come from large settlements the Manhattan district attorney reached with international banks charged with violating United States sanctions. As of July 2017, there has been one grant solicitation for this program.

⁶ This federal program, sponsored by the National Institute of Justice (NIJ) and the Federal Bureau of Investigation (FBI) DNA casework unit, is designed to learn more about the handling of sexual assault kits and to improve the collection and processing of quality DNA evidence, including whether rape kits can be processed more effectively in bulk. Any local law enforcement agency in the county is eligible to submit up to 30 rape kits per request to the FBI if the kits are more than one year old, have had no biological testing, and an incident or police report accompanies the kit. The only cost to the local law enforcement agency for such testing is the small cost for mailing the kits to the FBI laboratory.

⁷ These agencies are Allentown, Bensalem, Chambersburg, Dallas Township, Easton, Greensburg, Lancaster, Lower Swatara Township, New Sewickley Township, Northern York County Regional, Tredyffrin, and York police departments. As of July 2017, the program has issued a temporary moratorium on approval of additional kits for submission.

⁸ A slightly reduced, though similar amount of federal funds are available to Pennsylvania for the 2017 federal fiscal year, according to the National Institute of Justice March 2017 solicitation and recent awards.

⁹ National Institute of Justice DNA Capacity Enhancement and Backlog Reduction Program Awards for the 2016 Federal Fiscal Year.

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. The funds will also be used to implement a comprehensive response program plan to include, for example, the creation of a multidisciplinary working group and designated site coordinator.

- ***The Pennsylvania State Police Bureau of Forensic Sciences has implemented certain National Institute of Justice (NIJ) best practice recommendations in its testing of sexual assault kits.*** Such procedural changes include, for example, prioritization of evidentiary samples, limiting some serology testing, and focusing on high-throughput process flow to test for perpetrator DNA.¹⁰ Subsequent testing of other crime scene evidence is considered when the initial testing yields no significant results. Such procedural changes are helping the PSP "keep up" with processing of the sexual assault kit local law enforcement backlog that existed prior to September 2015, and the increased number of rape kits received following the Pennsylvania General Assembly's 2015 amendments to the Commonwealth's Sexual Assault Testing and Evidence Collection Act.¹¹ In September 2017, the PSP Bureau of Forensic Services also hired three new staff in Serology and two new staff in DNA. Five additional staff are planned in Serology and six additional staff are planned in DNA. Their 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 certain training before their full impact can be measured.

The statute calls for a six-month timeframe for testing of SAKs for incidents that occurred after early September 2015. The PSP Bureau of Forensic Services anticipates this is reasonable assuming adequate resources are available to the forensic laboratory for processing of all types of cases.

- ***Typically, local law enforcement agencies reporting an increase in their backlog from 2015 through 2016 are over-counting their backlog.*** Not all rape kits in the possession of law enforcement agencies are "backlogged kits" as defined in statute. To be awaiting forensic laboratory testing for more than 12 months, and thus meet the criteria for "backlogged kits":

¹⁰ The NIJ notes SAKs are amenable to high-throughput processing as they typically contain a single common collection of swabs, unlike serological examinations that must be performed on each piece of evidence.

¹¹ In calendar year 2016, for example, the PSP completed testing of 1.25 rape cases for every 1 case that remained untested at the end of the calendar year (i.e. 869 cases were completed in CY 2016 and 691 cases received by the lab remained untested as of December 31, 2016), and for the first nine months of 2017, it completed testing of 1.33 rape cases for every one case remaining untested as of the end of September 2017 (i.e., 930 were completed and 699 cases remained untested). Untested cases are cases in the custody of the laboratory from the moment they come in the door. As a result, untested cases may be cases in the custody of the laboratory for one day or more than 12 months. As of December 31, 2016, the PSP Bureau of Forensic Services had custody of 29 SAKs that it held for greater than 12 months, and 180 SAKs for greater than 6 months. The remaining 482 untested cases had been in the custody of the PSP for less than 6 months.

1. the evidence kit must be for a sexual assault crime and include a rape kit,
2. the victim must have provided written consent for forensic laboratory testing, and
3. the kit must not have received DNA and other appropriate forensic analysis, and should undergo DNA or other appropriate forensic analysis as determined by local law enforcement, and must be related to a criminal case or investigation in which “final disposition” has not been reached (i.e., the conviction or acquittal of all suspected perpetrators of the crime involved has not been reached, a determination by the local law enforcement agency in the possession of the kit that the case is unfounded, or a declaration by the victim of the crime involved that the act constituting the basis of the crime was not committed).

While statewide the number of backlogged kits declined from 2015 through 2016, the DOH reports show an increase for the PSP. LB&FC staff requested, and the PSP agreed to identify the reasons for its reported “backlogged kit” increase from 2015 through 2016. Based on PSP’s review of 85 kits that were reported as “backlogged,” it found:

- 33 (of 85) kits were from closed cases that were being kept for expiration of the applicable statute of limitations;
- 19 (of 85) were cases where the victim was uncooperative in the investigation;
- 11 (of 85) were cases the district attorney declined to prosecute;
- 9 (of 85) had been previously tested by a laboratory;
- 9 (of 85) were under active investigation, the criminal case was still pending disposition, or charges were filed without a rape kit submission for testing; and
- 4 (of 85) were cases where the kits were done by medical examiners as part of homicide investigations that were not sexual assault investigations.

PSP also concluded many of these kits were incorrectly reported as “backlogged sexual assault evidence” as they do not appear to meet all of Act 27’s backlog kit criteria.

For the six municipalities with more than one rape kit increase in their reported backlog from 2015 through 2016, we found more than half did not meet Act 27’s criteria for “backlogged kits.”

- Twenty-five (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;

- 16 (of 43) were delayed forensic laboratory submissions (including 7 that were submitted as of July 2017 and 9 awaiting the submission date established by the FBI under National Institute of Justice SAK Partnership Program discussed above); and
- 2 (of the 43) were new rape kits received in 2015.

Law enforcement officials noted the “rules for counting the SAK backlog” are unclear and require greater clarity and improved instructions to assure uniformity in counting of the backlog across the Commonwealth. The Pennsylvania State Police advised the LB&FC that based on its findings it would be drafting additional guidance materials for the upcoming backlog survey.

During the course of the study, the Pennsylvania Coalition Against Rape (PCAR) expressed concern that local law enforcement agencies were not collecting rape kits from health care facilities. In response to PCAR, representatives of one health system and one health care facility contacted the LB&FC to report such problems. As discussed below, the uncollected rape kits that were identified involve situations not specifically addressed in statute and do not include kits where a victim wishes to come forward and request an investigation by the local law enforcement agency.

The health system with six hospitals over three counties indicated that it had 11 uncollected kits. For eight of the 11 kits, it was in the process of confirming where the incident occurred, as only law enforcement where the incident occurred is responsible for the collection of the sexual assault evidence kit. The three remaining kits were for out-of-state victims (i.e., where the incident occurred in another state) receiving services at the Pennsylvania health care facility.

The health care facility also reported having uncollected out-of-state victim kits and identified three law enforcement agencies that reportedly had not collected rape kits. We spoke with the police chiefs of two of the law enforcement agencies, a representative of the district attorney’s office, and the county crime victim center. The police chiefs indicated they were following the county sexual assault protocol developed by the district attorney’s office, local law enforcement, health care providers, and the crime victim center. They understood the concerns raised by the facility involved kits where the site of the incident had not been identified, the victim did not wish to be identified, and the victim did not choose to immediately request an investigation.¹² As of late-October, according to the crime victim center, the district attorney’s office, the health care facilities, and

¹² According to the county crime victim center, local protocols call for the two hospitals in the county that complete rape kits to retain such kits when the victim does not choose to immediately request an investigation to assure the kit can be located if the victim subsequently seeks to request an investigation.

law enforcement agencies were meeting to resolve the situation and will be considering anonymous reporting protocols¹³ that are in place in several counties, how such rape kits would be retained for a two-year period, and how the victim would be notified prior to the kit's destruction if the victim has not requested an investigation during the two-year period.

- ***The Pennsylvania Department of Health is revising the recommended rape kit consent form to help assure victims/patients freely consent to forensic testing of their rape kits.*** During sexual victimization, victims lose control over what is done to them. From their perspective, the reporting and investigation of the sexual assault itself can feel like an extension of that loss of control over one's life. To support victims' ability to cope with the emotional and psychological effects of sexual assault and begin to regain a sense of control over what is done to them, a victim-centered response is required.

In support of this approach, the 2015 amendments to the statute provide certain victim rights. Such rights include the requirement the victim consent to forensic laboratory testing of the rape kit¹⁴ before the law enforcement agency where the incident occurred submits the kit for testing. The amendments also provide for the law enforcement agency to maintain the kit for up to two years to allow victims time to consider if they want to talk to law enforcement and request an investigation. The recommended revised consent form to ensure these rights are made clear to the victim (see Finding E) can be accessed at the Department website and is to be published in the *Pennsylvania Bulletin*.

The Pennsylvania State Police has identified a need for improved instructions for the annual survey of backlogged kits, and its revised instructions will apply to the Pennsylvania State Police and local law enforcement agencies statewide. For this reason, our report does not include recommendations, as we believe these actions will address the problem of misreporting.

¹³ Act 2015-27 does not define anonymous reporting, provide a process for victim consent for such reporting to law enforcement consistent with federal health record privacy rules, or provide a method of linking anonymous kits back to a victim if the victim later seeks to request an investigation. It is also silent on rape kits for out-of-state residents where the incident occurred out-of-state. In some counties, local sexual assault response teams have developed unique local protocols to address such challenging issues.

¹⁴ The 2015 amendments also provide victims with the right to request information concerning the status of the testing of their kits if they continue to provide contact information to the local law enforcement agency. According to PCAR, they are not aware of any victim having requested such information and having it denied.

I. Introduction

Senate Resolution 2017-75 directed the Legislative Budget & Finance Committee to study the extent to which rape kits remain unprocessed in the Commonwealth. It also directed us to identify the reasons kits remain untested as part of the Commonwealth's Sexual Assault Evidence Collection Program. (Appendix A provides a copy of the resolution.)

Study Scope and Objectives

Specifically, the study sought to:

1. Identify the number of backlogged rape kits since the enactment of Act 2015-27, and the extent to which they have been reduced since 2015.
2. Identify the reasons rape kits remain untested and in the possession of local law enforcement agencies and forensic laboratories for more than 12 months.
3. Identify possible sources of funding that could be used to expedite the processing of backlogged rape kits.
4. Determine the likelihood of local law enforcement agencies and forensic laboratories meeting the deadlines established in Act 2015-27 for eliminating the backlog in rape kits that should be tested.
5. Identify the processes in place to assure sexual assault victim consent has been given, the number of victims who have requested notification concerning the testing and results of testing, and the extent to which such notice has been provided.

Methodology

To identify the number of backlogged rape kits since the enactment of Act 2015-27 and the extent to which such backlogs have been reduced, we reviewed the Act and the criteria it sets forth for identifying backlogged rape kits. We also reviewed the Department of Health's annual reports on such backlogs in the possession of local law enforcement agencies and forensic laboratories at the end of calendar years 2015 and 2016. Based on analysis of such report data and the Department of Community and Economic Development (DCED) municipal police data, we were able to determine the extent to which local law enforcement agencies in the Commonwealth are reporting on their backlogged rape kits and the extent to which

the reported backlogs have been reduced. We were also able to identify changes in the backlog reported by state forensic laboratories.

To identify the reasons rape kits remain untested and in the possession of local law enforcement and forensic laboratories for more than 12 months, we contacted all local law enforcement agencies with more than one increase in their backlogged rape kits after 2015. We also requested, and the Pennsylvania State Police (PSP) agreed to conduct, a survey of the reasons for the net increase in its police station backlog as of December 31, 2016. The reasons for the increase in backlog counts reported by the Pennsylvania State Police and other local law enforcement agencies are noted in the report.

To identify possible sources of funding to expedite the processing of backlogged kits, we reviewed federal grant notices and grant programs, and past and current U.S. Department of Justice budget requests. We also reviewed information for Pennsylvania participants in national programs designed to enhance capacity and reduce DNA evidence backlogs, and reduce rape kit backlogs.

To identify the likelihood of local law enforcement and forensic labs meeting the deadlines established in Act 2015-27 for eliminating the backlog in rape kits that should be tested, we identified change in the backlog from 2015 through 2016, and the extent to which available grant programs effectively assist with backlog reduction. We also reviewed national best practices to promote more efficient testing of rape kits, and their application in Pennsylvania.

To identify the processes in place to assure sexual assault victims consent and other victim rights provided for in Act 27 are being protected, we reviewed proposed changes to the Pennsylvania Department of Health recommended rape kit consent form. We also reviewed consent forms used by certain major health care systems in their encounters with victims of sexual assault, including those who choose to remain anonymous and do not immediately give consent to have the rape kit tested as they address emotional and psychological trauma resulting from their victimization.

Acknowledgements

LB&FC staff completed this study with cooperation from the Pennsylvania Department of Health and the Pennsylvania State Police. 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.

We also thank Barbara Sheaffer, Medical Advocacy Coordinator for the Pennsylvania Coalition Against Rape; Thomas Gross, Executive Director, Pennsylvania Chiefs of Police Association; Richard Long, Executive Director, Pennsylvania District Attorneys Association; and local law enforcement agency officials and health care facility staff who provided input for our work. Without their assistance we would not have been able to complete this study.

Important Note

This report was developed by Legislative Budget and Finance Committee staff. The release of this report should not be construed as indicating that the Committee members endorse all the report's findings and recommendations.

Any questions or comments regarding the contents of this report should be directed to Patricia A. Berger, Executive Director, Legislative Budget and Finance Committee, P.O. Box 8737, Harrisburg, Pennsylvania 17120.

II. Findings

A. National Concerns About Untested Sexual Assault Evidence Kits Resulted in Pennsylvania Requiring an Inventory of the State Backlog

Sexual assault is a traumatic and uniquely personal crime. Behind each case is a person whose life has been irrevocably altered. Nationally, rape and sexual assault are one of the most underreported of violent crimes. According to U.S. Department of Justice, only one-third of the rapes and sexual assaults in 2014 were reported to law enforcement.

Victims offer many reasons for not reporting such crimes. According to the U.S. Department of Justice such reasons may include feelings of shame and self-blame, fear of not being believed, or even fear of being accused of complicity in the crime. Some victims may also be reluctant to become involved with the criminal justice system because of the high cost to themselves and their loved ones, with no guarantee of accountability by the offender. According to the Office on Violence Against Women:

Reporting a sexual assault can take considerable toll on some victims in the form of further emotional trauma, humiliation, fear or actuality of retaliation, loss of privacy, having one's personal life scrutinized, lost wages when work is missed to deal with matters related to the case, transportation and childcare costs related to participating in the legal process, and more.¹

Despite the significant toll on victims, even those who do report sexual assaults have not always had their sexual assault evidence kits (SAKs) tested. In recent years, many untested sexual assault kits (SAKs, or as they are commonly called "rape kits") have been found in police evidence rooms around the country. These evidence boxes that are used to collect and store biological evidence from a victim of an alleged sexual assault can include vaginal, oral, or anal swabs that may yield a perpetrator's DNA. In Detroit, for example, more than 11,000 SAKs (from sexual assaults that occurred from 1980 to 2009) were found in police evidence lockers. In Houston, almost 17,000 SAKs (from 1982 to 2009) were found.

Unsubmitted SAKs in Detroit and Houston

In response to reports of large numbers of sexual assault evidence kits not being submitted to laboratories for DNA testing, the U.S. Department of Justice sponsored research to:

¹ U.S. Department of Justice, *Sexual Assault Kit Testing Initiatives and Non-Investigative Kits*, January 2017.

- identify reasons victims' rape kits were not submitted to forensic labs for DNA testing and
- determine the results of testing such kits when it occurred.

Reason SAKs Not Submitted for DNA Testing: History is one reason for the large number of unsubmitted kits in Detroit and Houston, according to the National Institute of Justice. Forensic DNA testing did not exist before the mid-1990s, and a national database of DNA profiles did not begin to exist until 1994. In addition, modern DNA forensic analysis was not widely used until the late 1990s, and DNA databases were not widely used until the early 2000s.

In Detroit,² researchers concluded the problem of unsubmitted SAKs was also rooted in risk factors such as, for example:

- Victim-blaming beliefs and behaviors.
- Absence of written policies for submitting sexual assault kits to the laboratory.
- Budget cuts over the years that reduced the number of crime laboratory staff and law enforcement personnel assigned to sexual assault cases, and laboratory capacity issues (e.g., inefficient DNA testing equipment and methods).
- Lack of community-based advocacy services.
- Absence of sexual assault evidence nurses in the city's medical system.
- Medical providers who were untrained as to the potential usefulness of evidence in a rape kit.

In Houston,³ sexual assault kits went untested because:

- A police detective had to request a kit be analyzed, and if a suspect admitted to sexual contact with the victim or the victim had difficulty engaging in the criminal investigation, the detective might not have sent the kit to the lab for testing.
- DNA testing was expensive and resources available to investigators were limited.
- Victims often dropped out of the criminal justice process.

² In Detroit, the researchers examined 20 years of records and interviewed detectives, prosecutors, advocates, elected officials, laboratory personnel, and sexual assault nurse examiners.

³ In Houston, researchers randomly selected 500 cases from more than 6,600 previously untested SAKs for testing. In addition to DNA testing of such cases, researchers performed in-depth examination of the 500 cases based on review of police files.

Results of Forensic Laboratory Testing of Previously Unsubmitted SAKs:

The National Institute of Justice sponsored research also considered the results of testing of SAKs in Detroit and Houston. In Detroit, of the 1,595 sexual assault previously unsubmitted sexual assault kits that were tested and reviewed:

- almost half (785 of 1,595) had DNA profiles⁴ entered into CODIS⁵ and
- almost 30 percent (455 of 1,595) had CODIS hits.

Of the Detroit CODIS hits:

- 75 percent (339 of 455) were “offender hits” (i.e., a match of a DNA profile to an offender’s DNA profile in CODIS that reveals the identity of the suspect),
- 5 percent (27 of 455) were “forensic hits” (i.e., a match of a DNA profile in CODIS to an unidentified suspect profile from another crime scene), and
- 20 percent (89 of 455) were both offender and forensic hits.

The Detroit research did not set out to examine outcomes beyond CODIS hits. As a result, it did not determine whether the SAK-tested cases that were within the statute of limitations were subsequently investigated and successfully prosecuted. Based on the result of testing, however, the Detroit researchers concluded there is merit in SAK testing in both stranger and non-stranger cases as well as large numbers of formerly untested kits, regardless of whether the statute of limitation is likely to have expired, as “hit” information may be useful in pursuing current cases.

In Houston, of the 500 randomly selected cases that were previously untested, testing resulted in:

- 55 percent yielding a DNA profile, and 79 percent of those were uploaded to CODIS and

⁴ A DNA profile consists of a set of DNA identification characteristics, i.e., the particular chemical form at the various DNA locations (loci), which permit the DNA of one person to be distinguishable from that of another person.

⁵ CODIS refers to the Combined DNA Index System established and maintained by the Federal Bureau of Investigation. CODIS was established by Congress to assist in providing investigative leads for law enforcement in cases where no suspect has yet been identified. It was designed to assist law enforcement by providing potential investigative information in those cases in which crime scene evidence has yielded a DNA profile but no suspect has been identified. There are two types of CODIS “hits.” An offender hit is one where the identity of the potential suspect is generated. A forensic hit is one where DNA profiles obtained from two or more crime scenes are linked but the source of these profiles remains unknown. No names or other personal identifiers of offenders, arrestees, or detainees are stored using CODIS. Once the “hit” information is provided to law enforcement, neither the FBI or the local laboratory is notified as to the result of the investigation-aided case. According to the U.S. Department of Justice, Office on Violence Against Women, based on *NDIS Operational Procedures*, the evidence contained in a sexual assault kit is generally eligible for CODIS and the National DNA Index System if there is documentation that a crime was committed and if, under circumstances in which there were any consensual partners whose DNA might also be recovered during a medical forensic exam, elimination samples have been provided by, or requested from, those individuals.

- 21 percent (104 of the 500 cases) resulted in CODIS “hits” (i.e., forensic and/offender “hits”).

Of the 104 cases with CODIS “hits,” in those cases where the identity of the suspect was revealed (i.e., offender “hits”):

- 37 percent had an expired statute of limitations,
- 18 percent had a victim that could not be located/contacted,
- 13 percent had police reports noting the victim did not want to be involved in any additional investigation/prosecution.
- 10 percent had an alleged perpetrator that had already been arrested, and
- 5 percent had an alleged perpetrator who was deceased.⁶

As of August 2015, when the Houston researchers completed their review of judicial outcomes:

- 1 of the 104 cases had charges filed and
- 7 of the 104 cases were still being investigated.

The Houston researchers also completed in-depth examination of the 500 cases based on review of the police files. Based on such reviews, they found:

- Less than one-third of the victims had provided a sworn statement to police, which was important as cases typically did not advance without such a statement.
- Almost half of the victims did not want to take part in a further investigation, according to police notes.
- About 20 percent had arrest warrants sought.
- Eighteen percent had suspects interviewed.

National Census of Unsubmitted SAKs

Despite media attention about untested rape kits in police evidence rooms, the National Institute of Justice found that there is no official or current estimate of the number of untested SAKs in the custody of law enforcement agencies nationwide. Recognizing the importance of a census or inventory of untested kits as a first step in eliminating any backlog, the U.S. Department of Justice encouraged states to initiate inventories of untested sexual assault evidence kits in police custody, and made available assistance to help cash-strapped localities address their sexual assault kit backlogs.

⁶ Reported percentages do not equal to 100 as all of the 104 cases did not result in suspect person identification.

2015 Amendments to Pennsylvania's Sexual Assault Testing and Evidence Collection Act

In response to the nationwide concern, the Pennsylvania General Assembly amended Pennsylvania's Sexual Assault Testing and Evidence Collection Act.⁷ The 2015 amendments (i.e., Act 2015-27), in part, provided for submission and analysis of all sexual assault evidence obtained by a health care facility at the request or consent of the victim and called for an inventory of "backlogged evidence" as of the effective date of the amendments (September 8, 2015) and an annual report of such backlogged evidence. The amendments assigned the Pennsylvania Department of Health with responsibility for gathering and public dissemination of reports on the state's inventory of backlogged sexual assault evidence.

In 2016, the Pennsylvania Department of Health (DOH) and the Pennsylvania State Police (PSP) entered into a Memorandum of Understanding (MOU) providing for the PSP to have a significant role in implementing key portions of the Act. Specifically, the MOU provides for the PSP to assist the DOH with its responsibilities to:

- Establish forensic laboratory guidelines on criteria that a laboratory must meet to receive sexual assault evidence for forensic testing and analysis.
- Make all reasonable good faith efforts to identify and contact laboratories and local law enforcement agencies which are required to report information.
- Assist in gathering backlog data from laboratories and local law enforcement agencies.
- Gather data from laboratories and local law enforcement agencies concerning backlogged evidence.

For the reporting period beginning January 31, 2017, and each annual reporting period thereafter, the MOU specifies, the PSP will:

- Provide a method for laboratories and local law enforcement agencies to report backlog data to PSP.
- Forward the backlog data that has been gathered to DOH for its review and use.
- Provide DOH with the names of laboratories and local law enforcement agencies that do not respond to requests for the backlog data, so that DOH may take steps it deems appropriate.

Findings B, C, and D provide information on Pennsylvania's efforts to complete the statewide inventory of "backlogged" rape kits, the current status of the state's "backlog," and additional information on national assistance sources and Pennsylvania participants.

⁷ Act 2006-165.

B. In 2017, Sexual Assault Evidence Backlog Reports Were Filed for Most Pennsylvania Municipalities

Pennsylvania's Sexual Assault Testing and Evidence Collection Act (Act 2006-165, as amended)¹ establishes a program requiring local law enforcement agencies² to annually report to the Department of Health on "backlogged evidence" in their possession no later than January 31st. "Backlogged evidence" refers to sexual assault³ evidence that is awaiting submission to a qualified laboratory for testing for 12 months or more. As discussed in Finding C and below, the Act sets forth a complex list of criteria that must be met in order for a sexual assault evidence kit to be classified as "backlogged evidence."

Sexual assault evidence as defined in the Act is rape kit⁴ evidence collected by a hospital or health care facility under the minimum standard published by the DOH for sexual assault emergency services.⁵ Such evidence is "awaiting testing" only if it meets all of the following requirements. It:

- has been collected and is in the possession of a local law enforcement agency,
- has not received DNA and other appropriate forensic analysis,
- is related to a criminal case or investigation⁶ in which final disposition has not been reached, and
- should undergo DNA or other appropriate forensic analysis as determined by a local law enforcement agency.

¹ 35 P.S. §10172.1 *et seq.*

² Such agencies include a police department of a city, borough, incorporated town or township, a regional police department, the Pennsylvania State Police, or campus police.

³ The Act defines sexual assault as any of the offenses specified in 18 Pa.C.S. Ch. 31 Subch. B., which include rape, statutory sexual assault, involuntary deviate sexual intercourse, sexual assault, institutional sexual assault, sexual assault by sports official, volunteer or employee of nonprofit association, aggravated indecent assault, indecent assault, indecent exposure, sexual intercourse with animal, conduct relating to sex offenders, and unlawful dissemination of intimate image. For purposes of sexual assault victim emergency services provided by hospitals, the Pennsylvania Department of Health in the preamble to its final regulations for such treatment by hospitals clarified that indecent exposure as defined in 18 Pa.C.S. §3127 and sexual intercourse with an animal as defined in 18 Pa.C.S. §3129 are not covered in the Department regulation's definition of "sexual assault."

⁴ A sexual assault kit (SAK) or rape kit is a box used to collect and store biological evidence from the victim of an alleged sexual assault. Such SAK evidence can include, for example, vaginal, oral, or anal swabs; pubic hair combings; blood and urine specimens; and fingernail scrapings that may yield the perpetrator's DNA.

⁵ 28 Pa. Code §117.52(a)(1).

⁶ The Act also provides for certain victim rights, including the right to decline to request an investigation and to decline to have the rape kit submitted for DNA testing. With the victim's consent, such "non-investigative kits" can be provided to local law enforcement where the incident occurred and be retained for 24 months if the victim does not choose to initiate an investigation prior to that time. "Non-investigative" rape kits, however, do not meet all of the Act's criteria to be included in a local law enforcement agency's count of "backlogged kits." See Findings C and E for additional information on "non-investigative" and also "anonymous" kits.

With respect to a criminal case or investigation to which sexual assault evidence relates, the term “final disposition” refers to:

- the conviction or acquittal of all suspected perpetrators of the crime involved,
- a determination by the local law enforcement agency in possession of the sexual assault evidence that the case is unfounded, or
- a declaration by the victim of the crime involved that the act constituting the basis of the crime was not committed.

Pennsylvania Department of Health Reports on Rape Kit Backlogs

The Act further requires the Department of Health to issue a report on rape kit backlogs to the General Assembly by April 30th of each year. The Department issued its first report in April 2016 and a second report in April 2017.

According to the 2016 report, there were 3,217 sexual assault evidence kits awaiting testing as of September 7, 2015, including 1,908 “backlogged kits” that had been awaiting testing for 12 months or more. By the end of calendar year 2016, the number of “backlogged kits” dropped to 1,214, even with the number of law enforcement agency reporters substantially increasing from 432 to 899. (Finding C provides additional information on the “backlogged kits.”)

Local Law Enforcement Agencies Reporting for the 2017 Report

To date, the reports provided to the General Assembly do not identify the extent to which reports are being provided for all municipalities in the state, nor do they identify communities where law enforcement agencies have not filed the required reports. In part, this occurs because local law enforcement agencies may serve more than one municipality. In Pennsylvania, many municipalities contract with regional and other municipal police departments for their police services or receive primary police services from the Pennsylvania State Police. The instructions for completion of the report for the Department of Health call for only one survey to be completed regardless of the number of municipalities that may be served by the reporting local law enforcement agency, which makes it difficult to determine which municipalities are not reporting.

To determine the extent to which required reports are submitted for all municipalities in the state, LB&FC staff compared the Department of Community and Economic Development (DCED) statewide municipal police database with the reports received by the PSP on behalf of the DOH. As shown in Table 1, Pennsylvania’s law enforcement agencies provided sexual assault evidence kit backlog reports for the vast majority (2,245 of 2,560) of municipalities in the Commonwealth.

Table 1

**Number of Local Law Enforcement Agencies Reporting to the
Department of Health in 2017**

County	Total Number of Municipalities	Municipalities With Reports	Municipalities Not Submitting Reports	Other Reporters^a
Adams	34	30	4	1
Allegheny	128	81	47	14
Armstrong	45	33	12	1
Beaver	53	39	14	1
Bedford	38	38	0	0
Berks	72	63	9	4
Blair	24	22	2	3
Bradford	51	51	0	0
Bucks	53	48	5	1
Butler	57	52	5	3
Cambria	63	53	10	4
Cameron	7	7	0	0
Carbon	23	19	4	1
Centre	35	34	1	1
Chester	73	61	12	5
Clarion	34	34	0	1
Clearfield	49	47	2	2
Clinton	29	28	1	1
Columbia	33	29	4	0
Crawford	51	51	0	2
Cumberland	33	30	3	2
Dauphin	40	37	3	11
Delaware	49	39	10	2
Elk	12	12	0	0
Erie	38	35	3	7
Fayette	42	35	7	4
Forest ^b	9	9	0	0
Franklin	21	21	0	4
Fulton	13	13	0	1
Greene	26	24	2	1
Huntingdon	48	47	1	0
Indiana	38	37	1	1
Jefferson	34	32	2	1
Juniata ^b	17	17	0	1
Lackawanna	40	30	10	3
Lancaster	60	53	7	2
Lawrence	27	21	6	0

Table 1 (Continued)

County	Total Number of Municipalities	Municipalities With Reports	Municipalities Not Submitting Reports	Other Reporters ^a
Lebanon	26	23	3	2
Lehigh	24	24	0	5
Luzerne	76	59	17	4
Lycoming	52	48	4	2
McKean	22	18	4	0
Mercer	48	43	5	2
Mifflin	16	16	0	0
Monroe	20	19	1	3
Montgomery	62	52	10	3
Montour	11	10	1	1
Northampton	38	32	6	4
Northumberland	36	35	1	0
Perry ^b	30	30	0	0
Philadelphia	1	1	0	5
Pike ^b	13	13	0	0
Potter	30	28	2	0
Schuylkill	67	50	17	3
Snyder ^b	21	17	4	1
Somerset	50	48	2	1
Sullivan ^b	13	13	0	0
Susquehanna	40	33	7	1
Tioga	39	34	5	2
Union	14	13	1	1
Venango	31	24	7	2
Warren	27	27	0	0
Washington	56	35	21	4
Wayne	28	27	1	1
Westmoreland	65	55	10	6
Wyoming	23	21	2	0
York	72	71	1	4

^a Other reporters include other entities with a police force, including federal, state, and county agencies; public and private universities; and public school districts, etc.

^b County without a hospital.

Source: Developed by LB&FC staff from Department of Community and Economic Development municipal police coverage data and the Pennsylvania Department of Health April 2017 Pennsylvania Report on Untested Sexual Assault Kits and Backlogged Evidence.

In other words, the approximately 900 law enforcement agencies listed in the Department of Health's 2017 published report provided reports for almost 90 percent of the state's 2,560 municipalities. Table 1 also shows one-quarter (17 of 67) of the counties have reports covering all municipalities, and over-half (35 of 67) of the counties are missing reports for no more than two municipalities.

For the most part, municipalities that are not included in the DOH 2017 report are small boroughs or second class townships rather than cities or first class townships. One-third of the cities that are not included in the 2017 report had populations of less than the 10,000 (i.e., the population threshold for third class city designation). As shown in Table 2, 12 cities, 181 boroughs, 17 first class townships, and 109 second class townships are not accounted for in the 2017 report.

Table 2 also shows a substantial number of the boroughs and second class townships not included in the 2017 published report receive police services through regional or contracted police services.⁷ To ensure the goal of universal reporting⁸ is achieved, therefore, may require targeted efforts with those municipalities that use contracted and other forms of regional policing.

The significant level of reporting that has been achieved, however, reflects the major efforts of the Pennsylvania State Police and the Department of Health, the Pennsylvania Chiefs of Police Association, the Pennsylvania District Attorneys Association, and the Pennsylvania Coalition Against Rape to educate local law enforcement agencies about the importance of reporting on their backlog inventory. In particular, the Pennsylvania State Police:

- Assisted in identifying local law enforcement agencies.⁹
- Provided law enforcement agencies with notice of reporting requirements.

⁷ The Department of Community and Economic Development (DCED) Governor's Center for Local Government Services has noted Pennsylvania has more police departments than any other state in the country, and many are too small to provide a full range of police services. "Regional policing" either through consolidation of local police forces or contracted purchase of services, therefore, has been increasing as local officials have been faced with stagnant or declining revenues. DCED has identified several types of "regional policing." Such types include "contract policing services" (the most common method of regional policing service in the state) where police services are provided by one community to another for a mutually agreed upon dollar amount based on certain cost factors, and "consolidated police services that involves the abolishment of political subdivision boundaries for police services and the unification of existing police departments into one regional police department."

⁸ Total municipal reporting is difficult to accomplish because of lag time associated with updating mailing lists of personnel to receive reporting notices and instructions. During the course of this study, for example, LB&FC staff identified at least one city where the chief of police receiving the request to complete the backlog survey was no longer with the force at the time the survey was underway.

⁹ The Commonwealth Law Enforcement Assistance Network (CLEAN) provides a list that is used to identify and inform local law enforcement officials about the requirements for completion of the Department of Health sexual assault evidence survey. CLEAN is used by the Commonwealth's criminal justice agencies to access driver license and motor vehicle information, state criminal history records information in the Pennsylvania State Police Central Repository, the Commonwealth's central registry for Protection from Abuse orders, stolen and wanted files, law enforcement messaging capabilities, and many other services. It is also the state's conduit to the FBI's National Crime Information Center and to the International Justice and Public Safety Information Sharing Network.

Table 2

Municipal Status of Municipalities Without Rape Backlog Reports

County	Municipalities Without Reports	Cities	Boroughs	First Class Townships	Second Class Townships
Adams	4	0	4 ^a	0	0
Allegheny	47	2	29 ^b	8 ^c	8 ^b
Armstrong	12	0	4 ^c	0	8 ^c
Beaver	14	1	7 ^c	1	5 ^c
Bedford	0	0	0	0	0
Berks	9	0	2	0	7 ^b
Blair	2	0	1	0	1
Bradford	0	0	0	0	0
Bucks	5	0	3	0	2
Butler	5	1	3	0	1
Cambria	10	0	7 ^c	0	3 ^c
Cameron	0	0	0	0	0
Carbon	4	0	4	0	0
Centre	1	0	1	0	0
Chester	12	0	4 ^c	0	8
Clarion	0	0	0	0	0
Clearfield	2	0	1	0	1
Clinton	1	0	1	0	0
Columbia	4	0	2 ^d	0	2 ^d
Crawford	0	0	0	0	0
Cumberland	3	0	1	1	1
Dauphin	3	0	3	0	0
Delaware	10	1	6	2	1
Elk	0	0	0	0	0
Erie	3	0	2	0	1
Fayette	7	1	5	0	1
Forest	0	0	0	0	0
Franklin	0	0	0	0	0
Fulton	0	0	0	0	0
Greene	2	0	1	0	1
Huntingdon	1	0	1	0	0
Indiana	1	0	1	0	0
Jefferson	2	0	2	0	0
Juniata	0	0	0	0	0
Lackawanna	10	1	3	0	6 ^c
Lancaster	7	0	4 ^b	0	3 ^b
Lawrence	6	0	1 ^d	0	5

Table 2 (Continued)

County	Municipalities Without Reports	Cities	Boroughs	First Class Townships	Second Class Townships
Lebanon	3	0	0	1	2 ^c
Lehigh	0	0	0	0	0
Luzerne	17	2	10 ^c	1	4 ^c
Lycoming	4	0	3 ^c	0	1 ^c
McKean	4	0	2 ^d	0	2 ^d
Mercer	5	0	3 ^c	0	2 ^c
Mifflin	0	0	0	0	0
Monroe	1	0	1	0	0
Montgomery	10	0	6	2	2
Montour	1	0	0	0	1
Northampton	6	0	5	0	1
Northumberland	1	0	0	0	1
Perry	0	0	0	0	0
Philadelphia	0	0	0	0	0
Pike	0	0	0	0	0
Potter	2	0	1	0	1 ^c
Schuylkill	17	0	7 ^c	0	10 ^c
Snyder	4	0	3 ^c	0	1 ^c
Somerset	2	0	2 ^c	0	0
Sullivan	0	0	0	0	0
Susquehanna	7	0	5 ^c	0	2 ^c
Tioga	5	0	2 ^c	0	3 ^c
Union	1	0	1	0	0
Venango	7	0	5 ^c	0	2 ^c
Warren	0	0	0	0	0
Washington	21	2 ^c	12 ^b	1	6 ^b
Wayne	1	0	0	0	1
Westmoreland	10	1	7 ^c	0	2
Wyoming	2	0	2	0	0
York	1	0	1	0	0

^a Includes boroughs with contracted police services.

^b Includes municipality(ies) with regional and contract police services.

^c Includes municipality(ies) with contract police services.

^d Includes municipality(ies) with regional police services.

Source: Developed by LB&FC staff.

- Initially conducted seven seminars in five different locations across the state to train local law enforcement about Act 2015-27's requirements.
- Conducted a joint live webinar with PCAR in 2016.
- Developed a webinar for the Pa Virtual Training Network.
- Assisted in the development of standards for approved laboratories under the Act and issuance of storage and preservation policies for sexual assault evidence.
- Created an online survey for reporting for calendar year 2016.
- Established a resource account to manage the large volume of inquiries by law enforcement agencies regarding the Act.
- Forwarded reminder notices to all local law enforcement agencies receiving the survey.
- Provided follow-up notices to those who had not completed the survey in a timely manner.
- Developed Department Special Orders with detailed direction and instructions for the Pennsylvania State Police's implementation of the Act, including collecting, securing and reporting on untested SAKs and handling of evidence where the victim has elected to remain anonymous and/or not consented to submission of the sexual assault kit for testing as part of a criminal investigation.
- Revised its Automated Incident System to account for the collection of SAKs where the victim has not yet agreed to filing of a complaint and laboratory testing of the SAK evidence.¹⁰

¹⁰ Revisions to the Automated Incident System that were introduced in April 2016, were in the process of being revised during the course of this study. PSP initiated a process to amend the Special Order providing for the development of the SEXANO code after determining that entries using the code were in many cases incorrect. Such revisions are anticipated to be completed by the end of 2017.

C. For the Most Part, Pennsylvania Local Law Enforcement Agencies and Forensic Laboratories Report Reduced Sexual Assault Kit Backlogs From 2015 Through 2016

As discussed in Finding B, Act 2015-27 requires local law enforcement agencies and forensic laboratories approved by the Federal Bureau of Investigation to access CODIS¹ or an equivalent federally administered national DNA database to annually report to the Department of Health on their backlogged rape kits. Based on reports provided to the Department of Health, Pennsylvania's statewide rape kit backlog volume has declined since such volumes were first reported as of December 2015.

Sexual Assault Kit (SAK) Backlog Reduction Since December 31, 2015

As shown in Table 3, as of December 2015, there were about 1,900 reported backlogged sexual assault evidence kits in possession of forensic laboratories and local law enforcement. By the end of 2016, the number of backlogged kits had dropped to just over 1,200, with a net reduction of almost 700 rape kits. As shown in Table 3, Philadelphia accounts for the largest share of the rape kit inventory (1,574 of 3,179) and the net rape kit backlog reduction (593 kits).

Act 27 did not direct the Department of Health to identify and report on the number of SAKs that have been tested within a calendar year. The net change in backlog from 2015 to 2016 (i.e., 684) shown in Table 3, therefore, understates the number of backlogged rape kits that were tested. In all, 1,041 backlogged kits—not 684—were tested or no longer met Act 27's criteria for “backlogged” kits at the end of calendar year 2016.

The net change in Pennsylvania's SAK backlog from 2015 to the end of 2016 (shown in Table 3) also understates the reduction that has been occurring as it does not take into account the effect of the increased number of local law enforcement agencies reporting on their backlog for the first time for 2016.² Of the 357 newly reported backlogged kits at the end of calendar year 2016, local law enforcement agencies reporting for the first time accounted for more than one-third of such kits.

¹ In order to access CODIS, participating forensic laboratories must meet a variety of standards and requirements. They must also comply with procedures set forth in the U.S. Department of Justice's NDIS (National DNA Index System) Operational Procedures manual.

² In 2017, over 130 additional local law enforcement agencies reported for the first time on their untested and backlogged rape kits as of December 31, 2016.

Table 3

Sexual Assault Evidence Inventory and Reported Backlogs by Reporter Category

	Inventory as of 9/7/15	Backlog as of 12/31/15	Backlog as of 12/31/16	Net Change
Local Law Enforcement Agencies				
Municipal and Regional Police (Other than Philadelphia)	1,005	498	351	-147
PA State Police	58	19	98	+ 79
Other Local Law Enforcement	131	58	12	-46
Forensic Laboratories				
Allegheny County Office of Medical Examiner	132	29	23	-6
Philadelphia Police Department	1,574	1,294	701	-593
PA State Police Forensic Services	279	0	29	+29
Total	3,179	1,898	1,214	-684

Source: Developed by LB&FC staff based on data from the Pennsylvania Department of Health's reports published in 2016 and 2017.

Reasons for Increases in Reported Counts of “Backlogged” SAKs

As shown in Table 3, based on the Department of Health's published report, the Pennsylvania State Police had a net increase in its SAK backlog. To help identify possible reasons for the increase in the reported backlog count, in response to our request, the Pennsylvania State Police sampled the four stations that reported the largest number of backlogged rape kits in January 2017. Together the four stations reported approximately 85 backlogged rape kits.

Based on its review, the State Police concluded many of these kits were incorrectly reported as “backlogged sexual assault evidence.” Of the 85 SAKs reported as “backlogged”:

- 33 were from closed cases that were being kept for expiration of the applicable statute of limitations,
- 19 were cases where the victim was uncooperative in the investigation,
- 11 were cases the district attorney declined to prosecute,
- 9 had been previously tested by a laboratory,

- 9 were either under active investigation, or the criminal case was still pending disposition, or charges were filed without a rape kit submission for testing, and
- 4 were cases where the kits were done by medical examiners as part of homicide investigations that were not sexual assault investigations.

Act 27 does not mandate that every sexual assault evidence kit in the possession of a law enforcement agency be sent to an approved laboratory for testing, according to the Pennsylvania State Police and training materials for local law enforcement. Every rape kit collected by a local law enforcement agency, moreover, is not a backlogged kit. To be awaiting forensic laboratory testing for more than 12 months, and thus meet the criteria for backlogged kits:

1. the evidence kit must be for a sexual assault crime and include a rape kit,
2. the victim must have provided written consent for forensic laboratory testing, and
3. the kit must not have received DNA and other appropriate forensic analysis, and should undergo DNA or other appropriate forensic analysis as determined by local law enforcement, and must be related to a criminal case or investigation in which “final disposition” has not been reached (i.e., the conviction or acquittal of all suspected perpetrators of the crime involved has not been reached, a determination by the local law enforcement agency in the possession of the kit that the case is unfounded, or a declaration by the victim of the crime involved that the act constituting the basis of the crime was not committed).

LB&FC staff also contacted all local law enforcement agencies that had reported on their rape kit backlogs as of December 31, 2015, and reported more than a net increase of one kit in their backlog as of December 31, 2016. As shown in Table 4, local law enforcement agencies are also including such kits that do not meet all of Act 27’s criteria for backlogged kits in their rape kit backlogged evidence counts.

The most significant reasons for the misreporting of backlogged evidence are twofold, according to the Pennsylvania State Police. First, it is an internal training issue for Troopers assigned as evidence custodians. Second, associated with the training issue, is the transfer of new personnel into evidence custodian positions at certain stations after 2015. The need for additional guidance and training concerning backlogged kits appears to apply not only to the Pennsylvania State Police but also to other local law enforcement agencies. Based on its review, the Pennsylvania State Police is drafting additional guidance materials for use in upcoming surveys.

As a result of such reporting issues, the actual number of rape kits in the possession of law enforcement that should be tested (i.e., are backlogged kits as defined by Act 27) cannot be determined based on current Department of Health report data.

Table 4

**Selected Local Law Enforcement Agencies
Reasons for Reported Increase in SAK Backlog Counts**

Local Law Enforcement Agency	Increase in Backlog From 2015 to 2016	Reason for the Reported Increase
Indiana Borough	7	Delay in submission to the forensic lab. No SAK inventory as of July 2017.
Lewistown	18	New SAKs received within the last year. LEA follows all timeframes for pick up and submission. Count includes all kits that do not have signed permission for testing and are held for two years, ^a and all kits where the victim has subsequently reported that a crime did not occur. The LEA notes the rules for counting the SAK backlog are unclear, and recommends greater clarity and improved instructions to assure uniformity in counting of the backlog across the Commonwealth.
Milton	2	New SAKs received in 2015.
Franklin	4	Includes SAKs reported in the original inventory that have not yet been destroyed and for which there are not active investigations or criminal charges pending. ^b Local law enforcement officials are also unclear as to what is to be reported.
Greensburg	3	The count included "old" kits where the victim had not given signed permission for testing. As of July 2017, there was no backlog.
York	9	Kits pre-date implementation of Act 27 and have been accepted by the DOJ SAK Partnership Program but are not due to be submitted to the FBI until 2/13/18.

^a Act 2015-27 is intended to preserve the chain of sexual assault evidence, even if reported anonymously, while respecting victim's rights. It, therefore, provides for healthcare facilities to notify the local law enforcement agency of the jurisdiction where a reported sexual assault occurred of sexual assault evidence (i.e., rape kit) obtained by the health care facility with the victim's consent. Such local law enforcement agencies are to take possession of the sexual assault evidence within 72 hours from the time of notification regardless of whether the victim has provided identifying information or consented to testing of the sexual assault evidence kit. Before the local law enforcement agency can forward the kit for testing, the Act requires the adult victim for kits collected after September 8, 2015, provide consent to testing of the sexual assault evidence. If the victim has not consented to testing of the evidence, the evidence that is collected is to be preserved and stored for a period of two years, unless consent is provided prior to the conclusion of the two-year period. After such period, the evidence may be destroyed. Such SAKs where the victim has not consented to testing do not meet Act 27's criteria for "awaiting testing" as they are not yet related to a criminal case or investigation in which final disposition has not been reached. As such, they do not meet all criteria required to be included in the SAK "backlog" count. The federal Sexual Assault Forensic Evidence Reporting Act of 2013 (SAFER), which provided federal funding for auditing sexual assault evidence backlogs exempts from reporting sexual assault evidence that is not considered criminal evidence and specifically identifies, as one possible example, SAKs collected anonymously from a victim who is unwilling to make a criminal complaint.

^b Case 1: case investigated and a decision made by the prosecutor not to press charges. Case 2: 2012 case with the victim not filing charges and when contacted again confirmed charges would not be filed. Case 3: 2013 case where an investigation was completed and a decision made not to charge. Case 4: 2015 case where the victim determined not to pursue the case. Case 5: 2014 case with a John Doe suspect where the location of the event is not certain (based on the investigation) and the victim at the time of the incident cannot now be located by the police. Police efforts to locate the victim have been unsuccessful. A decision on the case disposition is before the District Attorney.

Source: Developed by LB&FC staff.

Uncollected Rape Kit Concerns

During the course of this study, the Pennsylvania Coalition Against Rape (PCAR) expressed concern that the backlog inventory data reported by local law enforcement agencies to the Department of Health was incomplete as it had learned of local concerns that law enforcement agencies were not collecting all rape kits from health care facilities. In response to our request, PCAR reached out to encourage such health care facilities to contact the LB&FC with specific information on facilities with uncollected rape kits. One health system and one hospital contacted the LB&FC to report on uncollected kits. As discussed below, such kits involve situations not specifically addressed in statute and do not include kits where a victim wishes to come forward and request an investigation by the local law enforcement agency.

The health system representative advised LB&FC staff that, after speaking with a local district attorney, it was attempting to inventory the uncollected rape kits in its possession. Following its research, the health system, which operates six hospitals in at least three counties, reported that it held a total of 11 rape kits. Local law enforcement agencies agreed to collect eight of the 11 kits upon verification of where the reported sexual assault occurred. In late October, the health system was in the process of providing the required verification.³ The remaining three kits involved out-of-state victims (i.e., where the incident occurred in another state) that did not initiate an investigation of the crime.⁴

The hospital also noted some of its uncollected rape kits were for out-of-state victims. It also specifically identified three local law enforcement agencies that reportedly were not collecting rape kits upon the hospital's request.

In response to such specific information, LB&FC staff contacted the county district attorney's office and the county crime victim center. We also contacted the chief of police of the two identified municipalities. In both instances, the local law enforcement agencies advised us they were following approved local protocols⁵ with regard to the uncollected kits, and that the concerns raised centered on issues related to patient/victim confidentiality. (See Finding E regarding rape kits associated with anonymous reporting.) They also stressed they immediately follow up on reports of sexual assault.

³ Act 27 provides for local law enforcement agencies where the incident occurred to collect the rape kit from the health care facility. The law enforcement agency where the hospital is located, therefore, may not be responsible for such collection.

⁴ Act 27 does not address rape kits involving out-of-state victims that receive emergency services at a Pennsylvania health care facility.

⁵ According to the county crime victim center, the local protocol calls for the two hospitals in the county that perform rape kit examinations to retain such kits when the victim does not chose to immediately request an investigation to assure the kit can be located if the victim subsequently seeks to request an investigation. Reportedly, the county sexual assault task force developed this approach in view of the numerous hospitals in the county and the county's many local law enforcement agencies, including several campus police forces.

The Pennsylvania State Police station serving certain local municipalities in the county was the third law enforcement agency identified by the hospital representative. The Pennsylvania State Police has internal procedures to establish and preserve a chain of evidence for anonymous rape kits when the victim does not wish to be identified to police and request an investigation. Such procedures state:

Although investigatory action is inherently limited in an anonymous reporting scenario, the assigned investigator shall ensure sufficient information is collected and documented on the General Investigative Report to establish and preserve the chain of custody of the sexual assault evidence, and to facilitate a full investigation in the event the victim decides to come forth and request a criminal investigation. The information shall include, but is not limited to:

- The location of the healthcare facility where the evidence was collected.
- The date and time the report was received by the Department.
- The identity and contact information of the health care worker who made the report to the Department.
- The identity and contact information for the health care worker who collected the evidence from the victim.
- The date, time, and location the evidence was collected from the victim.
- Medical record numbers (without identifying information), if available/provided.⁶

At our request, the PSP requested its legal staff to make inquiries about the hospital's reported rape kit collection problem. Based on PSP's review, the concern about uncollected rape kits involves kits where the victim is not requesting an investigation, and local discussions were planned to address the concerns.

LB&FC staff were also advised by the hospital representative, one of the local law enforcement agencies, the county district attorney's office, and the county's crime victim center that meetings were planned to consider revisions to the local protocol. As of late-October, according to the crime victim center, the district attorney's office, the two hospitals that perform rape kit exams, and local law enforcement agencies were meeting to consider anonymous reporting protocols that are in place in several counties, how such rape kits would be retained for a two-year period, and how the victim would be notified prior to the kit's destruction if the victim has not requested an investigation during the two-year period.

Prior to the passage of Act 27, some district attorneys, local law enforcement agencies, health care providers, and victim advocates worked together to devise

⁶ Pennsylvania State Police, Special Orders (2015-061 and 2017-63).

protocols tailored to local circumstances that allow for anonymous and delayed reporting while establishing and preserving the chain of evidence for the sexual assault. In several of these counties, anonymous reporting consent forms were developed, along with systems to assure health care provider compliance with federal laws and regulations governing the privacy protected health information⁷ and linking of the rape kit evidence to the anonymous victim if the victim later requests an investigation (See Finding E).

To establish and preserve a chain of evidence for such “anonymous” kits if the victim later decides to request an investigation, Act 27 provides for local law enforcement in the jurisdiction where the sexual assault occurred to collect such rape kits. It does not, however:

- define “anonymous” or “non-investigative” rape kits,⁸
- establish criteria for linking such collected kits back to the victim should that victim subsequently choose to request an investigation, or
- provide for the provision of the forensic medical documentation to local law enforcement in ways that conform to the confidentiality of medical records as required by federal privacy laws and regulations.

The Act is effectively silent on the process to be used for collection and maintenance of rape kits when the victim does not want to be identified to law enforcement agencies or request an investigation. To address the issues local community district attorneys, law enforcement agencies, health care facilities, and victim advocates in some communities have developed differing solutions based on their community resources that allow for victim confidentiality, securing of evidence, protection of victim rights, and follow-up if an investigation is requested. (Finding E presents efforts several counties have undertaken to address this issue.)

⁷ The Health Insurance Portability and Accountability Act of 1996 (HIPAA) provides the ability to transfer and continue health coverage when workers change jobs, reduces health care fraud and abuse; mandates industry standards for health care information and billing; and requires the protection and confidential handling of protected health information. According to the federal Department of Health and Human Services, the HIPAA Privacy Rule established national standards to protect individuals' medical records and other personal health information and applies to health plans, health care clearinghouses, and health care providers. The Rule requires appropriate safeguards to protect the privacy of personal health information, sets limits and conditions on the uses and disclosures that may be made of such information without patient authorization, and gives patients an array of rights regarding such information. The HIPAA Privacy Rule, which provides federal protections for personal health information held by covered entities, uses the term “protected health information” (PHI). PHI is operationally defined in the rule to include information in any format that identifies the individual, including demographic information collected from an individual that can reasonably be used to identify the individual and not simply the past, present, or future physical or mental health or medical condition of an individual. Health care providers take care to comply with HIPAA as failure to comply can result in civil and criminal penalties and result in exclusion from participation in Medicare. Under certain circumstances a HIPAA covered entity may disclose PHI to law enforcement, such as to respond to a request for PHI about an adult victim of a crime when the victim agrees.

⁸ According to the U.S. Department of Justice, Office of Violence Against Women, the terms “anonymous,” or “non-investigative,” or “non-reported” rape kits are often used interchangeably to refer to rape kits associated with victims who have not chosen to report a sexual assault to law enforcement and participate in an investigation.

D. Pennsylvania Has Benefited From Nationally Available Financial Support/Assistance for SAK Backlog Reduction

Financial support/assistance has been available to reduce the rape kit backlog both nationally and in Pennsylvania. Pennsylvania law enforcement agencies and forensic laboratories have participated in two such programs specifically targeted to reducing rape kit backlogs:

- the New York County District Attorney Sexual Assault Kit Backlog Elimination Program (DANY) and
- the National Institute of Justice SAK Partnership Program.

These two programs specifically targeted to reducing the rape kit backlog have made available support to eliminate what is effectively the equivalent of about 60 percent of Pennsylvania's rape kit backlog count as of December 2015.

As discussed below, the Commonwealth has also benefited from other federal financial support to reduce DNA backlogs in forensic laboratories. Such support, however, is not targeted exclusively to testing of rape kits.

The New York County DA Sexual Assault Kit Backlog Elimination Program

The New York County DA Sexual Assault Kit Backlog Elimination Program (DANY) provided the Allegheny County Medical Examiner and the Philadelphia Police Department with grants to test backlogged rape kits.¹

- The Allegheny County Medical Examiner received \$254,000 to test 400 kits.
- The Philadelphia Police Department received \$419,788 to test 600 kits.

As part of this program, the Manhattan District Attorney's Office established agreements with two private forensic labs to secure competitive rates for kit testing by program participants. Through the DANY program, rape kits tests cost on average less than \$675 per kit to test. Such a rate is less than half the estimated national average cost (\$1,000- -\$1,500) for such testing, according to the Manhattan District Attorney's Office.

The Allegheny County Medical Examiner's Office reports DANY program funding has been very helpful. As of 2017, almost 400 SAKs were submitted to

¹ Civil forfeiture funds from international banks in New York have been used to fund this program. Such funds come from large settlements the Manhattan district attorney reached with international banks charged with violating United State sanctions. As of July 2017, there has been one grant solicitation for this program.

DANY vendors for testing. Consistent with results of testing in national studies (see Finding A), of the previously unsubmitted SAKs that were tested:

- one-third yielded possible profiles suitable for CODIS,
- one-third were screening negative (i.e., no male DNA obtained), and
- one-quarter were CODIS ineligible (i.e., male DNA obtained but sample insufficient for CODIS).

Since the DANY grant became available, the DNA uploads to CODIS by the Allegheny County Medical Examiner's Office have doubled. In 2015, 29 cases were uploaded to CODIS compared to 61 in 2016, and 54 as of September 2017.

National Institute of Justice SAK Partnership

The Pennsylvania State Police Bureau of Forensic Services has encouraged local municipalities to participate in the SAK Partnership sponsored by the National Institute of Justice (NIJ) and the Federal Bureau of Investigation (FBI) DNA Casework Unit. The SAK partnership program started to accept kits from law enforcement agencies and laboratories in August 2014.

Through this federal program to learn more about the handling of sexual assault kits and to improve the collection and processing of quality DNA evidence,² the FBI laboratory tests DNA evidence from 30 untested SAKs per week and enters eligible profiles into CODIS. NIJ collects and analyzes data about the kits, including whether they can be processed efficiently when submitted in bulk. Any local law enforcement agency in the county is eligible to submit up to 30 SAKS per requests if:

- SAKs are more than one year old and have had no biological testing³ and
- an incident or police report accompanies each SAK.

The only cost to the local law enforcement agency for testing of such kits is a small cost for mailing the kits to the FBI laboratory. Nationwide, according to the National Institute of Justice, as of 2016, the Partnership program had:

- over 1,400 SAKS processed,
- nearly 750 CODIS entries, and
- over 280 investigative leads or hits.

² The project is intended to assist the development of tools and strategies to evaluate current DNA-testing methods and procedures, improve practices, and inform future policies.

³ DNA analysis in criminal investigations requires collection of biological evidence at the crime scene and from known persons. After such evidence has been submitted to a lab, one of the first stages of analysis involves serological screening of the evidence. Such screening involves examination of the submitted items for stains or other biological materials using chemical screening tests to identify the type of suspected physiological fluids (e.g., blood, semen, saliva, etc.). After the suspected biological materials are identified, cuttings or swabs are then forwarded to a DNA processing unit for analysis for DNA extraction and analysis.

As of the end of December 2016, 87 SAKs had been submitted to the SAK Partnership from Pennsylvania and an additional 41 had been approved for submission. Such kits have been submitted by or approved for the Allentown, Bensalem, Chambersburg, Dallas Township, Easton, Greensburg, Lancaster, Lower Swatara Township, New Sewickley Township, Northern York County Regional, Tredyffrin, and York police departments.

As of July 2017, the program has issued a temporary moratorium on approval of additional kits for submission. The U.S. Department of Justice, National Institute of Justice reports that findings from this project will be released over the next several years.

Other Sexual Assault Kit Initiative Programs

The National Sexual Assault Kit Initiative (SAKI) program is a discretionary competitive grant program which is administered by the Department of Justice's Bureau of Justice Assistance and provides grants to law enforcement agencies and prosecutors. In federal fiscal year 2016, 19 SAKI sites were awarded a total of \$24.7 million, and 7 of the 2015 grantees received a total of \$6.6 million in supplemental funding. SAKI grant funds must be used to support multidisciplinary community response teams engaged in comprehensive reform of the jurisdictions' approaches to sexual assault cases resulting from evidence found in previously unsubmitted sexual assault kits.

While the SAKI program is focused on unsubmitted rape kits, its funding is not targeted to testing of kits where testing has been delayed for longer than 30 days due to a backlog of work in an approved forensic laboratory. Pennsylvania's highly decentralized municipal local law enforcement system, moreover, effectively precludes a single state agency such as the Pennsylvania State Police from being able to meet the federal program's multidisciplinary community team requirement.

In October 2017, the City of Philadelphia received a 2017 SAKI grant for \$910,945 to 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. The funds will also be used to implement a comprehensive response program plan to include, for example, the creation of a multidisciplinary working group and designated site coordinator.

DNA Capacity Enhancement and Backlog Reduction (CEBR) Program

Though it is not targeted exclusively to sexual assault and rape kit backlogs, the federal DNA Capacity Enhancement and Backlog Reduction Program is an important federal funding source for state and local public forensic laboratories to reduce DNA evidence backlogs. The federal government initiated capacity enhancement and backlog reduction grants to state and local public forensic laboratories

starting in the early 2000s. At the time, the National Institute of Justice recognized that the rapidly expanding use of DNA typing to aid criminal investigations was expanding at a pace that significantly exceeded the ability of public forensic labs to process such requests. As a result, DNA testing backlogs in forensic labs were significantly increasing.

According to the National Institute of Justice, nationally, from 2008 through 2014, for every 1 percent improvement in laboratory time to process the evidence there has been a subsequent 1.1 percent increase in the demand for analysis.⁴ Nonetheless, from 2008 through 2014, the gap has been closing. During the period, the number of requests increased by nearly 50 percent, at the same time the number of completed cases rose by over 60 percent.

Since 2005, according to the National Institute of Justice, nationwide, DNA Capacity Enhancement and Backlog Reduction program grantees have:

- completed over 725,000 cases,
- uploaded over 327,000 forensic profiles to CODIS, and
- had over 165,000 CODIS “hits.”

In 2014, NIJ-supported DNA testing accounted for 45 percent of the total cases processed by forensic laboratories, according to the National Institute of Justice.⁵

Pennsylvania’s three public forensic labs participate in this federal program. As shown in Exhibit 1, for federal fiscal year 2016, Pennsylvania’s three CODIS approved forensic laboratories have been awarded just over \$2 million in federal funds for DNA capacity enhancement and backlog reduction.⁶ Recipients of grant awards determine the portion of their funding to use for capacity enhancement and what portion to use for analysis of forensic DNA and/or DNA database samples.

⁴ During the same period, the “turnaround time” for DNA testing of forensic cases remained almost constant, with a “turnaround” time for DNA testing in forensic cases of about 180 days (i.e., 6 months) in 2014. Such a “turnaround” time for DNA testing, however, is an average for all types of DNA testing. The time required, may vary depending upon many factors, including the complexity of the procedures, use of innovative solutions, availability of examiners and other resources.

⁵ National Institute of Justice, *Report Forensic Science, Fiscal Year 2016 Funding for DNA Analysis, Capacity Enhancement, and Other Forensic Activities*. May 2017.

⁶ States and units of local government with existing crime laboratories that conduct forensic DNA analysis, participate in external audits demonstrating compliance with quality assurance standards established by the FBI, and participate in the National DNA Index System are eligible to receive federal program funds. In general available funds are allocated to states based on the number of Uniform Crime Report (UCR) Part 1 Violent Crimes and Property Crimes reported to the FBI, the population of the state, and the aggregate amount available to eligible applicants from each state. For federal fiscal year 2016, Pennsylvania’s estimated aggregate available award amount was \$2.08 million; and for 2017, \$2.04 million.

Exhibit 1

FFY 2016 Pennsylvania Federal DNA Capacity Enhancement and Backlog Reduction (CEBR) Program Awards

	Award Amount	Award Description
Allegheny County Office of the Medical Examiner	\$256,082	<ul style="list-style-type: none"> • Outsource DNA report technical reviews. • Contract out the validation of certain DNA analysis software. • Upgrade CODIS server. • Secure an external laboratory audit and in-house training for staff scientists. • Conduct a continuous quality improvement project. • Purchase supplies. • Fund staff overtime. • Work a minimum of 142 additional backlogged cases from January 1, 2017, to December 31, 2018.
Philadelphia Police Department Office of Forensic Science, Criminalistics Unit	\$824,458	<ul style="list-style-type: none"> • Fund staff overtime to analyze backlogged forensic biology/DNA cases. • Reduce the forensic biology/DNA case backlog through outsourcing of backlogged cases to be screened for biological material suitable for DNA analysis and the development of any DNA profiles. • Provide training and continuing education. • Reduce the backlog of forensic biology DNA cases by at least 880 cases by the end of 2018.
Pennsylvania State Police, Bureau of Forensic Services	\$1,001,425	<ul style="list-style-type: none"> • Replace and upgrade existing equipment. • Acquire a supplemental instrument. • Purchase supplies. • Fund overtime for serology personnel to screen the cases prior to submission to the DNA Division. • Fund overtime for DNA personnel to process, analyze, and review backlog cases or backlog database samples.

Source: Developed by LB&FC staff from National Institute of Justice DNA Capacity Enhancement and Backlog Reduction Program Awards for the 2016 Federal Fiscal Year.

According to the National Institute of Justice, this program is one part of the solution of increasing laboratory capacity to outpace demand for DNA analysis. Continued investments in research, technology, and innovative solutions is critical to improve capacity and efficiency. In the past, the Allegheny County Medical Examiner's Office, for example, was one of six sites selected to participate in such research to identify strategies to improve efficiency in DNA processing. Specifically, the Pennsylvania site proposed to identify bottlenecks in sexual assault evidence

processing through process mapping and develop new procedures to improve efficiency.⁷

While the Pennsylvania State Police did not participate in the National Institute of Justice grant to identify strategies to improve efficiency in DNA processing, it has made changes to its procedures to in part emulate some of the NIJ best practice recommendations for testing of sexual assault kits. Such procedural changes include, for example, prioritization of evidentiary samples, limiting some serology testing, and focusing on high-throughput process flow to test for perpetrator DNA.⁸ Subsequent testing of other crime scene evidence is considered when the initial testing yields no significant results.

Such procedural changes are helping the Pennsylvania State Police Bureau of Forensic Services laboratories to “keep up” with processing of the sexual assault kit local law enforcement backlog that existed prior to September 2015, and the increased number of rape kits received following the Pennsylvania General Assembly’s 2015 amendments to the Commonwealth’s Sexual Assault Testing and Evidence Collection Act. In calendar year 2016, for example, the PSP completed testing of 1.25 rape cases for every 1 case that remained untested at the end of the calendar year (i.e., 869 cases were completed in CY 2016 and 691 cases received by the lab remained untested⁹ as of December 31, 2016), and for the first nine months of 2017, it completed testing of 1.33 rape cases for every one case remaining untested as of the end of September 2017 (i.e., 930 were completed and 699 cases remained untested).

In September 2017, the PSP Bureau of Forensic Services hired three new staff in Serology and two new staff in DNA. Eleven additional staff for Serology and DNA are planned. Their 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.

One of the 2015 amendments to the Commonwealth’s Sexual Assault Testing and Evidence Collection Act states:

⁷ See the Urban Institute Justice Policy Center, *Evaluation of the Forensic DNA Unit Efficiency Improvement Program*, May 2012 for details of Allegheny’s project and its status at the end of the evaluation.

⁸ The National Institute of Justice notes that SAKs are amenable to high-throughput processing as they typically contain a single common collection of swabs, unlike serological examinations that must be performed on each piece of evidence individually.

⁹ Untested cases are cases in the custody of the laboratory from the moment they come in the door. As a result, untested cases may be cases in the custody of the laboratory for one day or more than 12 months. As of December 31, 2016, the PSP Bureau of Forensic Services had custody of 29 SAKs that it held for greater than 12 months, and 180 SAKs for greater than 6 months. The remaining 482 untested cases had been in the custody of the PSP for less than 6 months.

A laboratory shall complete the testing or analysis of all sexual assault evidence submitted pursuant to this section within six months from the date of receipt of the evidence, if possible.¹⁰

According to the PSP, a six-month timeframe for testing of SAKs for incidents that occurred after September 2015 is reasonable assuming adequate resources are available to the forensic laboratory for processing of all types of required cases.

¹⁰ Act 2006-165, as amended, §3(c)(4).

E. The Department of Health Is Revising Its SAK Consent Forms to Assure Sexual Assault Victim Consent for DNA Evidence Testing

As noted in Finding A, sexual assault is a traumatic personal experience and violent crime. Behind each case is a person whose life has been irrevocably altered. During sexual victimization, victims lose control over what is done to them. From their perspective, the reporting and investigation of the sexual assault itself can feel like an extension of that loss of control over one's life.

To support victims' ability to cope with the emotional and psychological effects of sexual assault and begin to regain a sense of control over what is done to them, a victim-centered response is required. Such an approach, in which health care providers and law enforcement responders are accountable to the victim, supports the victim's ability to cope with the emotional and psychological effects of the crime and cooperate with its investigation and the collection and securing of the chain of evidence.

Sexual Assault Victim Consent Required for DNA Evidence Testing

To provide a victim-centered approach to sexual assault crimes and promote victim recovery, Act 2015-27 provides specific rights to victims of sexual assault. It, for example, requires that sexual assault victims give written consent for both collecting evidence, and separately, for testing of the sexual assault evidence kit. Specifically, it states:

The following shall apply to all sexual assault evidence obtained by a health care facility at the request or consent of the victim, on or after the effective date of this section:

- (1) As soon as practical, the health care facility shall notify the local law enforcement agency of the jurisdiction where the reported sexual assault occurred. The local law enforcement agency shall take possession of the sexual assault evidence within 72 hours of receiving notice. For those cases in which the victim has not yet consented to testing of the evidence, the evidence shall be preserved and stored for a period of no less than two years, unless consent is provided before that period....
- (2) If a victim [within the next two years] wishes to consent to the testing of the sexual assault evidence, the victim or a victim advocate acting at the victim's direction shall provide written notice to the local law enforcement agency and the district attorney of the jurisdiction where the reported sexual assault occurred.¹

¹ Act 2015-27, §3(c).

To assure victims are aware of their rights and provide for testing of SAKs only with the victim's consent, the Department of Health is revising its recommended SAK Consent for Collection and Release of Evidence and Information Form. As shown in Exhibit 2, the Department's revised form (which a victim/patient completes at the health care facility) specifies the victim/patient must provide consent for:

- the law enforcement authority sending the evidence to a laboratory approved by the FBI for CODIS access for the lab's testing analysis of the evidence.

Exhibit 2 also shows the patient has the right to withdraw consent for evidence testing by contacting the law enforcement agency investigating the case. According to the Pennsylvania State Police, should such a situation occur the law enforcement agency would contact the lab and tell the lab that no analysis of the evidence is necessary. The evidence would then be returned to the law enforcement agency untested, and the lab would issue a report saying no analysis was necessary per the local law enforcement agency.

Rape Kits Associated With Anonymous Reporting

The revised consent form helps assure sexual assault victims are advised of their rights and freely give consent for the testing of the sexual assault evidence. It also notes the victim has been informed of other options if unwilling to speak with law enforcement at the point of contact with the health care provider (i.e., medical treatment only, anonymous reporting²).

The revised consent form is not designed, however, to accommodate victims who wish to remain anonymous to the police. As noted previously, this can present difficulties when/if police are requested to collect the kit from the hospital, as there would be no way, absent a specifically designated/agreed to system, to link the kit to the victim who later requests an investigation.

² According to the U.S. Department of Justice, Office of Violence Against Women, the terms "anonymous," or "non-investigative," or "non-reported" rape kits are often used interchangeably to refer to rape kits associated with victims who have not chosen to report a sexual assault to law enforcement and participate in an investigation.

Exhibit 2

Revised Consent for Collection and Release of Evidence and Information

Step 1

Consent for Collection and Release of Evidence and Information

I, _____, freely consent to allow _____, Name of Health Care Facility and his/her medical and nursing associates to conduct a forensic examination, which includes the collection of evidence. This procedure has been fully explained to me and I understand that I may refuse any part of the examination. Clinical observation for physical evidence of both penetration and injury to my person will be done. Collection of other specimens and blood samples for laboratory analysis may be done per the events reported.

Patient Information:

- I understand that hospitals and health care facilities must report certain crimes to law enforcement authorities in cases where a victim seeks medical care.
- I have been informed that Pennsylvania law provides that a victim of a sexual offense shall not be charged for the costs of a forensic rape examination.
- I understand that "I" do not need to talk to law enforcement authorities directly if I choose not to, however I understand that the health care facility will provide the evidence of the forensic rape examination to law enforcement authorities. Options have been explained if "I" do not talk to law enforcement (medical treatment only, anonymous reporting).

Patient Consent: Please initial to the right to indicate agree/disagree for each statement	Agree	Disagree
Examination		
• I understand that a forensic examination to collect evidence from the sexual assault may be conducted, with my consent, by a health care professional(s), to discover and preserve evidence of the assault. If conducted, the report of the examination and any evidence will be provided to law enforcement authorities.		
• I agree that law enforcement can send the evidence to a laboratory approved by the Federal Bureau of Investigation (FBI) for CODIS access. The evidence will undergo testing analysis by the approved laboratory.		
• I understand that I may withdraw consent at any time for any portion of the examination.		
• I understand that I may withdraw consent for evidence testing by contacting the law enforcement agency investigating my case.		
Photographs		
• I understand that collection of evidence may include photographing injuries and that these photographs may include the genital area.		
General Information		
• I understand that evidence including photographs may be collected from this report for health and forensic purposes and provided to health authorities and other qualified persons with a valid educational or scientific interest for demographic and/or epidemiological studies.		

I fully understand the nature of the examination and the fact that medical information gathered by this means may be used as evidence in a court of law or in connection with enforcement of public health rules and law.

Print Name (patient)

Signature of Witness

Signature (patient)

Date

Time

Signature of Parent or Guardian/Relationship

Initials Date

Prior to the passage of Act 27, some district attorneys, local law enforcement agencies, health care providers, and victim advocates worked together to allow for anonymous and delayed reporting while establishing and preserving the chain of evidence for the sexual assault. Exhibit 3 provides an example of an anonymous consent reporting form that is used in a county with a protocol for anonymous reporting of sexual assault and where immediate consent to rape kit testing is not provided by the victim.

As shown in Exhibit 3, the victim who wishes to remain anonymous gives signed consent to the health care facility for transfer of the rape kit and appropriate paperwork to the law enforcement agency responsible for storage of the evidence until such time as the victim decides to file a report to law enforcement. The victim is also assured:

- The forensic medical documentation is part of the medical record and treated in accordance with health care laws and regulations concerning the privacy and access to such records.
- The sexual assault evidence kit and any paperwork given to law enforcement will not contain any identifying information, including medical record data.
- A separate local tracking system has been developed so that the kit can be retrieved for transfer to the investigative local law enforcement agency if the victim requests an investigation at a later date or for destruction purposes after two years.³
- If the victim decides to report to law enforcement, the patient identifying information will be connected to the rape kit evidence, and after such a connection is made the rape kit evidence will be transferred to the investigating law enforcement agency where the reported sexual assault occurred.
- The anonymous victim is also notified that a delayed report to law enforcement may limit opportunity to collect evidence from the suspect and the crime scene may be jeopardized.
- The victim is provided with a unique identifier to use when requesting an investigation and advised how to initiate transfer of the rape kit to the appropriate investigative local law enforcement agency.
- The victim is provided initial notice and additional opportunity for notice about the destruction of the rape kit if during the two-year period the victim has not requested an investigation.

³ In this county, county agencies are utilized to store the anonymous rape kits.

Exhibit 3

Example of Anonymous Reporting

Consent for Collection and Release of Evidence and Information Form

<p style="text-align: center;">ANONYMOUS REPORTING CONSENT FOR COLLECTION AND RELEASE OF EVIDENCE AND INFORMATION</p> <hr/> <p>I, _____ am requesting a sexual assault evidence collection forensic examination, but do not want to report to law enforcement at this time. Anonymous reporting ensures that victims of sexual assault are provided forensic examinations without requiring a report to law enforcement and/or participation in the criminal justice system.</p>	<p>If label not available, please fill in below.</p> <p>NAME: _____</p> <p>DOB: _____</p> <p>MRN: _____</p>
--	---

PATIENT CONSENT

Evidence Examination

(Initials): _____

- I understand that a forensic medical examination may be conducted to discover and preserve evidence of the sexual assault, in case I decide I want to report to law enforcement at a later date.
- In accordance with hospital privacy practices and applicable laws and regulations, the health care facility will retain the forensic medical documentation as part of the medical record.
- In order to protect my privacy, the sexual assault evidence collection kit and any paperwork given to the appointed law enforcement agency will not contain any identifying information.

(Initials): _____

Evidence Storage and Retention

(Initials): _____

- Evidence collected today will be stored by the appointed law enforcement agency for a period of 2 years. If I have not had contact with law enforcement or the Forensic program within this timeframe to report the incident, the evidence will be destroyed.
- I understand that information will be entered into a database so the kit may be retrieved at a later date either for destruction purposes or for transfer to the law enforcement agency handling my case should I decide to report.
- If I decide to make a report to law enforcement, my identifying information will then be connected to the evidence that was collected today. Once my identifying information is connected to the evidence, it will be transferred to the investigating law enforcement agency.
- If I decide to make a report to law enforcement, I am agreeing that the investigating law enforcement agency can submit the evidence to a laboratory approved by the Federal Bureau of Investigation for CODIS access. The evidence collected will undergo testing analysis by the approved laboratory within six months of the laboratory receiving the evidence. If I want to revoke the consent for evidence to undergo testing analysis, contact the investigating law enforcement agency.

(Initials): _____

Delayed Reporting

(Initials): _____

- By delaying a report to law enforcement, I understand that the opportunity to collect evidence from the suspect and the crime scene may be jeopardized. This may create challenges for law enforcement and the prosecution when pursuing charges against the suspect.

Exhibit 3 (Continued)

ANONYMOUS REPORTING CONSENT FOR COLLECTION AND RELEASE OF EVIDENCE AND INFORMATION		If label not available, please fill in below. NAME: _____ DOB: _____ MRN: _____
CONTACTING LAW ENFORCEMENT If you decide at any time to report to law enforcement be prepared to give them the number from the sticker on this page. <input type="checkbox"/> _____ County: contact the _____ County Detective Bureau at _____. <input type="checkbox"/> _____ County: contact the _____ County Detective at _____. <input type="checkbox"/> _____ County: _____		
CONTACT INFORMATION If you have not had contact with law enforcement or the Forensic program to make a report, the evidence will be destroyed after 2 years. If contact information is provided, a forensic examiner will attempt to reach you two weeks prior to the destruction of your evidence. If you cannot be reached after two attempts, your evidence will be destroyed without any further notification. Please indicate your preferences below. Would you like to be notified before your evidence is destroyed? <input type="checkbox"/> Yes <input type="checkbox"/> No Preferred Method of Contact: _____ Leave Message? Cell Phone: _____ <input type="checkbox"/> Caller can leave message Landline Phone: _____ <input type="checkbox"/> Caller can leave message E-mail: _____		
I authorize the collection and transfer of my evidence collection kit and applicable forms by the health care facility to the appointed law enforcement agency. I understand that the law enforcement agency has not been given the right to view my medical record, or analyze the evidence, until I decide to file a report of sexual assault. I further understand that if I do not report the crime within 2 years the evidence will be destroyed.		
Patient Signature: _____	Date: _____	Time: _____
Patient Printed Name: _____		
Witness Signature: _____	Date: _____	Time: _____
Witness Printed Name: _____		

Page 2 of 2
Form#10321
Rev. (11/15)

White - Chart Copy
Yellow - Patient Copy
Pink- Law Enforcement Copy

Source: A hospital from a county with an anonymous reporting protocol and procedures.

Other Sexual Assault Victim Rights

Act 27 also provides for local law enforcement disclosure of certain information to the victim upon the victim's request.⁴ Such information includes if the evidence was submitted to the lab, and the status of evidence analysis. The victim may also request local law enforcement to report when DNA is searched against CODIS and when a DNA match occurs, unless disclosure of the results would interfere with the investigation or prosecution of the crime.

Hospitals in their patient information advise the patient of such right to request information from the local law enforcement agency where the incident occurred. They also advise the patient that in order to exercise this right the victim must provide a current address and telephone number to the local law enforcement agency.

During the course of this study, we asked advocates and local law enforcement agencies with whom we spoke if they were aware of victims who have requested information on the results of testing. We also asked if they were aware of victims who had requested such information and were denied.⁵ While there is no formal tracking of such requests, victim advocates are unaware of any victim seeking to exercise their rights encountering problems with their requests.

⁴ Victims' guardians can act for the victims, and victims and guardians can designate an advocate or agency to act on their behalf. A close relative of a deceased victim (spouse, parent, sibling, child) has the same rights as the victim and may also use an advocate.

⁵ In the course of this study, we spoke with a representative of a health care facility interested in gaining access to the results of individual victim SAK testing for research purposes. Pennsylvania Department of Health staff also advised us that they had received a request for rape kit testing results for purposes of research from a third party. Act 2015-27 does not provide for access to individual case results for third parties. According to Pennsylvania Department of Health staff, when such access was briefly discussed by members of the Pennsylvania Department of Health's Sexual Assault Evidence Collection Committee, overall, the committee had concerns about the sharing of individual case data/information regarding sexual assault victims with third parties based on issues of confidentiality.

III. Appendices

APPENDIX A

PRINTER'S NO. 698

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE RESOLUTION

No. 75 Session of
2017

INTRODUCED BY MENSCH, BROWNE, BOSCOLA, BREWSTER, EICHELBERGER,
SABATINA, FONTANA, AUMENT, RAFFERTY, COSTA, VULAKOVICH,
TARTAGLIONE AND VOGEL, APRIL 13, 2017

REFERRED TO LAW AND JUSTICE, APRIL 13, 2017

A RESOLUTION

Directing the Legislative Budget and Finance Committee to conduct a study of the extent to which rape kits remain unprocessed in this Commonwealth and identify the reasons that the kits remain untested.

WHEREAS, The Pennsylvania Department of Health recently reported that more than 3,000 rape kits are awaiting testing at law enforcement agencies and crime labs in this Commonwealth, including more than 1,800 rape kits that have been waiting 12 months or longer to be tested; and

WHEREAS, Act 27 of 2015 provided a methodology for local law enforcement agencies to count the backlog of rape kits and established a three-year time frame to eliminate this backlog; and

WHEREAS, Certain legal requirements imposed by Act 27 of 2015, including that victims provide written consent prior to rape kits being tested, that rape kits be picked up by a local law enforcement agency within 72 hours of being collected and that victims receive notification when a kit has been tested, do not appear to be uniformly followed by all local law enforcement agencies within this Commonwealth; and

Appendix A (Continued)

WHEREAS, Studies show that rapists tend to be serial criminals, thus increasing the urgency that rape kits be processed in a timely manner so the DNA information can be promptly entered into the Federal Bureau of Investigation's DNA database; and

WHEREAS, The Office of the Auditor General recently released an audit identifying many of these and other problems and making recommendations to address these issues; therefore be it

RESOLVED, That the Senate direct the Legislative Budget and Finance Committee to conduct a study of the extent to which rape kits remain unprocessed in this Commonwealth and identify the reasons that the kits remain untested; and be it further

RESOLVED, That the Legislative Budget and Finance Committee identify all possible sources of funding, including all available Federal funding, that could be used to expedite the processing of untested rape kits; and be it further

RESOLVED, That the Legislative Budget and Finance Committee assess the likelihood that local law enforcement agencies and crime labs in this Commonwealth will be able to meet the deadlines established in Act 27 of 2015 for eliminating the backlog of untested rape kits; and be it further

RESOLVED, That the Legislative Budget and Finance Committee assess compliance with the victim consent, victim notification, reporting and other requirements established by Act 27 of 2015 with regard to the processing of rape kits; and be it further

RESOLVED, That the Legislative Budget and Finance Committee report its findings to the General Assembly within 180 days of the adoption of this resolution.

APPENDIX B

Response to This Report



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HEALTH

January 26, 2018

Philip R. Durgin, Executive Director
Legislative Budget and Finance Committee
P.O. Box 8737
Harrisburg, Pa 17105-8737

Dear Mr. Durgin:

Thank you for your letter regarding the recently completed study on the Commonwealth's Sexual Assault Evidence Collection Program. We appreciate the efforts of the Legislative Budget and Finance Committee review of this very important topic. I have reviewed the report and shared a copy with our Deputy Secretary for Health Planning and Assessment, Raphael Barishansky, who oversees the Bureau of Laboratories. We have no additional comments on the report.

Thank you again for your review of this matter. If you have any questions or concerns, please contact Acting Director of Legislative Affairs William Freeman at 717-783-3985 or wfreeman@pa.gov.

Sincerely,

A handwritten signature in black ink that appears to read "CLL".

Rachel L. Levine, MD
Acting Secretary of Health
Physician General