



OLR RESEARCH REPORT

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RAPE KITS, TESTING BACKLOGS, AND MODEL STATUTES

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You asked about the (1) extent of backlogs in testing rape kits in the nation and Connecticut and (2) model laws addressing this issue.

SUMMARY

A “rape kit” (the familiar term for a sexual assault evidence collection kit) is a package of materials that healthcare personnel use to collect, label, and preserve physical evidence after a sexual assault. The material collected can contain DNA and other physical evidence that may help to identify an assailant or rule out a suspect. The National Institute of Justice (NIJ) considers a kit backlogged if it has not been tested 30 days after being submitted to a crime lab.

We found no central source for tracking rape kit backlogs. In 2009, CBS News investigated the number of untested kits in 24 cities and states. They reported there were at least 20,000 of them in those combined locations.

http://www.cbsnews.com/stories/2009/11/09/cbsnews_investigates/main5590118.shtml

Other news outlets and nonprofit groups suggest that the figures are higher. For example, in 2010, it was estimated that the rape kit backlog in Dallas, Houston, and San Antonio alone was approximately 22,000. A number of states do not keep track of their backlogs.

In Connecticut, the Department of Public Safety's (DPS, now known as the Department of Emergency Services and Homeland Security) Forensic Science Laboratory tests all of the state's rape kits. Major William Podgorski, DPS' legislative liaison, reports that as of August 29, 2011, there were 205 rape kits waiting to be processed and that if the lab received no more kits for the next six months, it could eliminate its backlog. Another 40 cases have been processed and are awaiting DNA analysis, with an estimated completion date of five months from now.

We found two states (Illinois and Texas) with laws intended to eliminate testing backlogs. At least one city (San Francisco) has an ordinance intended to keep its rape kit testing current. And a bill currently before the California legislature requires law enforcement agencies and the state's Department of Justice (DOJ) to collect and report on evidence aimed at determining if universal rape kit testing improves arrest rates.

RAPE KITS

Although there is some variation from location to location, the typical rape kit contains:

1. instructions,
2. bags and sheets for evidence collection,
3. swabs,
4. a comb,
5. envelopes,
6. blood collection devices, and
7. documentation forms.

Aside from swabs of the victim's body where semen, blood, saliva or other fluids are likely to be found, evidence collected and placed in rape kit bags for forensic testing includes clothing, hair, fiber, and material lodged under the victim's fingernails.

BACKLOGS

Backlogs are usually associated with cases waiting to be analyzed in crime laboratories. But untested kits that may contain DNA evidence are also held in police department evidence lockers. NIJ reports that a survey of 2,000 law enforcement agencies found that 18% of unsolved rape cases contained evidence that the agency had not submitted to a crime lab. <http://www.nij.gov/nij/topics/forensics/lab-operations/evidence-backlogs/law-enforcement.htm>

Many states cite inadequate funding as a reason for their backlogs. It typically costs about \$1,000 to process one rape kit.

CONNECTICUT

In Connecticut, rape kit processing is a three-step process. Forensic lab staff triages cases daily, giving priority to aggravated sexual assaults and those with elderly or young victims. Its Forensic Biology Section analyzes the physical evidence. If DNA is present, they send a sample to the Nuclear Casework Group for DNA analysis.

Two hundred five kits are waiting to be processed; the lab estimates that it will take more than six months to finish testing them. Another 40 have been processed through the first two steps and are awaiting DNA analysis. Given existing staffing levels, it will take the lab about five months to complete those analyses, reports Major Podgorski.

Survey of Rape Kit Turnaround Times

We conducted a 50-state survey last year asking crime labs how long it took them to analyze rape kits and other sexual assault evidence. DPS reported that it took an average of six months to analyze a sexual assault case where a rape kit was the only evidence submitted; it took a year when the kit was accompanied by other evidence. Based on our comparison with a geographically diverse group of other crime labs, we concluded that the length of time it took Connecticut's crime lab to complete sexual assault evidence testing, particularly in cases where the rape kit was submitted with other evidence, was significantly longer than that of other labs, except Rhode Island, whose turnaround time for testing rape kits without other evidence was six months, the same as Connecticut's (OLR Report [2010-R-0086](#), "DNA Testing Turnaround Times in 50 States").

LEGISLATIVE RESPONSES: ILLINOIS

Illinois was the first state to legislatively set a deadline for completing rape kit processing. Effective September 1, 2010, PA 096-1011, requires that all rape kits be booked into evidence and tested within six months. A precipitating factor in the law's passage was a report from Human Rights Watch in June 2010 indicating that 80% of Illinois rape kits booked into evidence since 1995 had not been tested. The act also requires the State Police to develop a plan to eliminate the backlog.

PA 096-1011

Public Act 096-1011, “An Act Concerning Sexual Assault Evidence,” requires law enforcement agencies that receive sexual assault evidence in connection with a criminal investigation to submit that evidence within 10 business days to either a Department of State Police’s crime lab or one approved and designated by the State Police director. The lab must analyze the evidence within six months of receipt. Under the act, each state and local law enforcement agency was to provide the State Police an inventory of its rape kit backlog by October 1, 2010. The department was directed to develop a plan for eliminating them by February 15, 2011.

Definitions. Under the act, “law enforcement agencies” means local, county, state, or federal law enforcement agencies involved in investigating sexual assault cases in Illinois. “Sexual assault evidence” means evidence collected in connection with a sexual assault investigation, including evidence collected using State Police evidence collection kits.

Inventory of Evidence. By October 1, 2010, each of Illinois’ 999 law enforcement agencies were required to provide the State Police with written notice of the number of sexual assault cases it had with untested evidence. By March 9, 2010, the agency and laboratory had to make appropriate arrangements to ensure that all cases with evidence collected in connection with sexual assault investigations were submitted to the lab. This applied to cases with investigations begun before September 1, 2010.

Backlog Elimination Plan. The act required the State Police to develop a plan to analyze how to handle the backlogged cases. It must include a:

1. summary of the inventories reported by law enforcement agencies,
2. timeline for completing these analyses, and
3. funding and resources needed to complete the analyses within the specified timeline.

The act permits the department to outsource testing notwithstanding a law that prohibits this in active cases without a prosecuting officer’s consent.

The backlog elimination plan is online at <http://www.isp.state.il.us/docs/6-721.pdf>.

Failure to Submit Sexual Assault Evidence. The act specifies that a law enforcement agency that fails to submit sexual assault evidence within the act's 10-day deadline is not foreclosed from submitting it at a later date. Missing the deadline also does not affect a lab's authority to accept, analyze, or transmit testing results to local, state, or national data bases according to established protocols.

Certification. A certification signed by a law enforcement officer stating that the evidence is being submitted in connection with a prior or current sexual assault investigation must accompany submissions. The act provides a process for expunging records when the police submit a sample for any other purpose.

Rules. The act directs the State Police to promulgate rules governing its operation, which it has done.
<http://www.ilga.gov/legislation/publicacts/96/PDF/096-1011.pdf>

TEXAS

Texas enacted a law that goes into effect September 1, 2011 (SB 1636). It establishes a flexible timeline for collecting and analyzing sexual assault evidence. But its implementation may be hampered by a provision that prohibits the legislature from appropriating funds for any added costs associated with performing the new duties the act imposes.

The act addresses analysis of evidence, mandatory data base comparisons, victim consent, backlog elimination, and funding. It requires the backlog elimination and data comparisons to be completed by September 1, 2014, if funding is available. It applies only to physical evidence in active criminal cases opened after September 1, 1996.

S.B. 1636

Definitions. Under the act, "active criminal case" means a case in which (1) a sexual assault has been reported to a law enforcement agency, (2) physical evidence of the assault has been submitted to the agency or an accredited crime laboratory for analysis, and (3) either (a) the statute of limitations for prosecuting the case has not run or (b) the DNA profile is eligible to be compared with profiles in the state data bank or the FBI's Combined Data Index System (CODIS).

“Department” means the Department of Public Safety (DPS) and “law enforcement agency” means a state or local law enforcement agency with jurisdiction over a Texas sexual assault investigation.

Crime Labs. The act requires law enforcement agencies that acquire sexual assault evidence to submit it to a public accredited crime lab within 30 days of receipt. The evidence must be accompanied by a signed certification stating that it is being submitted in connection with a criminal investigation. Beginning October 1, 2011, labs must complete their analyses as soon as practicable. Evidence collected before then must meet the standard as closely as possible.

Under the act, DPS and other public accredited crime labs may contract with private accredited labs to ensure that the analyses are finished expeditiously. In such circumstances, the public lab may conduct quality assurance reviews of the contracting lab’s work.

Failure to Submit Sexual Assault Evidence. A law enforcement agency’s failure to submit sexual assault evidence within the 30-day period does not affect the authority of:

1. the agency to submit the evidence to a crime lab or
2. an accredited crime lab to analyze the evidence or provide its results to appropriate persons.

Data Base Comparison Required. The act requires DPS, when an appropriate person requests it, to compare DNA profiles it compiles with those in (1) state data bases, if the amount and quality of the analyzed sample meet state comparison standards, and (2) CODIS, if they meet its standards.

Consent for Release of Rape Kit Information. With some exceptions, the act makes rape kits confidential and prohibits their release without the written consent of an appropriate party, which the act defines as:

1. the victim, if he or she is at least 14 years of age;
2. a parent or guardian or an employee of the Department of Family and Protective Services if the victim under age 14;
3. a personal representative if the victim is deceased;

4. any legal agent if the victim is incapacitated, and, as a last resort;
5. the police officer investigating the crime.

It specifies the information that must be included in the consent form and that its rules regarding release of information apply only to disclosures of rape kit evidence and do not affect other confidential information.

Backlog Elimination. Under the act, by October 15, 2011, law enforcement agencies having sexual assault evidence that has not been submitted for testing must provide DPS with a list of those cases. By April 1, 2012, and subject to the availability of lab storage space, the agencies must submit all of their backlogged evidence to an appropriate public or private lab.

DPS Report. Under the act, by February 15, 2013, DPS must submit a report to the governor and appropriate legislative committees containing:

1. a projected timeline for completing analyses in backlogged cases;
2. a request for any necessary funding to accomplish this, including requests for state grants;
3. grant and funding applications, as appropriate; and
4. if the department determines that outsourcing is necessary, (a) a proposed method for determining which evidence should be outsourced and (b) a list of labs the department determines are capable of doing the job.

The act requires the backlog and data comparisons to be completed by September 1, 2014, if funding is available.

Funding. The act bars DPS from using legislative appropriations to discharge any additional duties associated with its implementation. And it specifies that DPS need not fund rape kit analyses using more state highway funds than it has historically spent.

DPS is authorized to obtain funding by soliciting and receiving grants, gifts, or money donations from the federal government or private sources. The Texas legislature must also determine how much to appropriate from the Criminal Justice Planning Account in the governor's Criminal Justice Division for grants allaying the costs of complying with the new requirements. Law enforcement agencies can refuse to perform duties the act imposes on them unless the state repays them for their costs.

SAN FRANCISCO

California's penal code establishes a sexual assault victim's DNA bill of rights that stresses the importance of testing DNA evidence in sexual assault cases. The law also gives victims the right to obtain specific information about their cases if the law enforcement agency has sufficient resources to do so. It requires law enforcement agencies to provide victims with specified notices.

On December 6, 2010, San Francisco adopted an ordinance amending its Administrative Code to implement the state law (Ord. No. 317-10).

Ordinance 317-10

The ordinance requires:

1. the city's police department to develop and implement procedures to collect and test DNA samples in sexual assault cases,
2. the department to provide information and various notices to victims,
3. the department to report on DNA collection and testing as part of the mayor's budget submission, and
4. making it the city's policy to appropriate sufficient funds to ensure that DNA evidence is tested, and continues to be tested, in a timely fashion.

Collecting and Testing Procedures. The ordinance directs the police chief to develop and implement the collecting, testing, and victim notification procedures. The collection and testing procedures must include the goal of (1) collecting rape kits from healthcare providers within 72 hours of notification and (2) completing DNA testing within 14 days of receipt. The department's procedures must also include timeframes for testing DNA evidence collected at crime scenes.

“Testing” includes conducting an examination of the DNA evidence, developing a potential suspect profile, and uploading to CODIS any profile obtained from the evidence.

Funding. The ordinance creates the Police DNA Testing in Sexual Assault Cases Account that can receive general and grant funds, money gifts, and any other funds the department receives. It can use the funds to provide personnel, equipment, and other resources it needs to ensure timely DNA collection and testing.

The department may re-program surplus funds if it has met the collection and testing goals for the previous six months. It must use the re-programmed funds for other evidence collection activities.

California

Citing fiscal concerns, Governor Schwarzenegger twice vetoed California bills that would have, among other things, required law enforcement agencies to collect statistical data on rape kits for the state’s Department of Justice (DOJ) to analyze. A bill currently pending before the California Assembly is a study bill that shares most of the features of the two vetoed bills (AB 322). The legislative counsel has concluded that the bill is a state-mandated local program.

AB 322

The bill contains (1) reporting requirements, (2) legislative findings, and (3) a pilot program designed to determine whether testing all rape kits increases arrest rates. If enacted, it would take effect July 1, 2012. The bill sunsets on July 1, 2017 and is repealed January 1, 2018.

Report from Law Enforcement. Current law requires local law enforcement agencies to annually report to the DOJ on the number of forcible rapes reported in their jurisdictions in the previous calendar year. The bill requires the agencies to also report on the number of rape kits collected during that period. For unsolved cases, the report must include how many rape kits were (1) collected, (2) submitted for testing, (3) tested, (4) submitted to law enforcement, or (5) not submitted for testing.

This requirement applies to rape kits collected on and after July 1, 2012. The first report is due one year later.

Legislative Findings. The bill includes the legislature's findings that for 2009, forcible rapes accounted for 5% of all violent crimes in California, but only 1.7% of arrests. The forcible rape arrest rate for that year was 23.6% compared with 30.6% in 1999.

The legislature also stated its intention to create a pilot program in nine counties with forcible rape arrest rates of less than 12% to determine whether testing all rape kits improves arrest rates. Under the program, DOJ must open and analyze all rape kits collected from these counties after July 1, 2012.

Pilot Program. The bill establishes the pilot program. The nine counties selected have low forcible rape arrest rates, ranging from 2.4% to 11.3 %. The bill requires DOJ, in cooperation with these counties, to establish a process for collecting, storing, and testing rape kits beginning on a date DOJ sets. Law enforcement agencies must send each kit to DOJ for testing and analysis and the department must process them all.

Under the bill, the pilot program's effectiveness is determined by examining statistics the local law enforcement agencies already submit annually to the attorney general concerning the number of forcible rapes in the county and the number of arrests it has made for that crime.

The pilot program sunsets January 1, 2015, but the legislature may extend it for one year. If this occurs, DOJ must post this information on its web site. The bill repeals the pilot program authorization on January 1, 2016.

Funding. The legislative counsel has concluded that the bill imposes a state mandate on local law enforcement agencies by giving them additional reporting duties. By law, if the Commission on State Mandates also finds it a state mandate, the California Constitution requires the state to follow existing laws concerning how to reimburse them.

SP:ts