



NATIONAL INSTITUTE OF JUSTICE

CREATING A PLAN TO TEST A LARGE NUMBER OF SEXUAL ASSAULT KITS

MARCH 2016 LESSONS LEARNED: SEXUAL ASSAULT KITS



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Many jurisdictions across the country are looking at the issue of sexual assault evidence that has not been submitted to a crime lab for testing. As part of an NIJ-supported project, the Wayne County (Detroit), Mich., Prosecutor’s Office formed a multidisciplinary team to address the issue. On the team were practitioners who deal with sexual assaults every day — police officers, crime lab analysts, prosecutors and victim advocates — as well as social science researchers from Michigan State University (MSU).

The MSU researchers were led by Rebecca Campbell, Ph.D., a nationally recognized expert on sexual assault. Dr. Campbell’s work with the Detroit multidisciplinary team followed an “action-research” model. First, the team worked collaboratively to understand the scope of the issue: How many sexual assault kits (SAKs) in police custody had never been sent to a crime lab for testing, and how and why did the problem develop? Then, the team identified effective, sustainable responses.

One such response was developing a plan for testing a large number of previously untested kits. Here are 14 lessons that the team learned in the Detroit project:

1 Bring everyone to the table.

One of the advantages of forming a multidisciplinary team to plan and execute an audit of previously untested SAKs is that the same individuals or organizations are well-positioned to guide the development of a testing plan. (See companion brochures, *Forming an Action-Research Team to Address Sexual Assault Cases* and *Performing an Audit of Sexual Assault Evidence in Police Custody*.) If the audit, or census, was completed without the guidance of a multidisciplinary team, it is crucial to form one for the testing phase. Testing evidence in sexual assault cases raises complex legal, psychological and evidentiary issues — and having a team with representatives from the police department, prosecution, forensic sciences, medicine and both systems-based and community-based advocacy will help ensure that the testing plan considers diverse perspectives.

In 2011, after a competitive selection process, the National Institute of Justice awarded grants to the Wayne County (Detroit), Mich., Prosecutor’s Office and to the Houston Police Department to look at the issue of sexual assault kits (SAKs) that had not previously been sent to a crime laboratory for DNA testing.

The overarching goal of this project was to identify effective, sustainable responses regarding previously untested SAKs.

This brochure — one in a series of four — is derived from lessons learned during the project in Detroit. We hope that the brochures assist other jurisdictions that are addressing the issue of previously untested SAKs.

2 Discuss the purpose and utility of testing.

Explore each team member's thoughts about the purpose and value of SAK testing. Be aware that opinions are likely to be deeply rooted in each person's profession and their discipline's roles in — and responsibilities to — society. For example, people may believe that:

- Testing is most useful in “stranger” cases in which the identity of the suspect is unknown.
- Testing is less useful in “non-stranger” cases because the identity of the suspect is already known.
- Testing is useful in non-stranger cases to identify patterns of serial assaults.
- To conserve limited resources, cases in which the statute of limitations (SOL) has expired should not be tested.
- Cases in which the SOL has expired should be tested because a “hit” in the FBI's Combined DNA Index System (CODIS) might link to a current case.

It is not necessary to come to complete agreement on every issue; the team may “agree to disagree” on some issues and still move forward.

3 Testing ‘all’ versus ‘some.’

The decision to test all — or only some — previously untested SAKs will likely be influenced by ideological and practical factors: Ideologically, team members or policymakers may believe that all kits should be tested; practically, however, the decision may have to be based on resources. If the decision is made to test all kits — sometimes referred to as the “forklift” approach — it can be helpful to “start small.” Going through the entire process with even as few as 10 kits as a pilot project can inform a larger testing plan.

4 Funding and resource availability.

The number of SAKs that a jurisdiction will be able to test in the immediate or near future will depend on the availability of resources. When thinking about a longer term testing plan, however, a jurisdiction may have to apply for grants or engage in fundraising.

5 Talking about language: What should we call it?

Unless the decision is made to test all kits, the team will have to decide which kits will be tested and in what order. Here, language matters a great deal. Words like 'prioritize,' 'triage,' 'select,' 'tier,' and 'sample' are likely to have different meanings to different stakeholders. The term 'prioritize,' for example, may imply that kits will be processed in a particular order based on their probative value. To help avoid later misunderstandings, have explicit conversations about the terms that are going to be used to describe the process that the jurisdiction is embarking on.

6 Develop a process for selecting which SAKs will be tested.

If it is not possible to send all SAKs for testing at the same time, a process must be developed for selecting which kits will be tested and in what general order. Here are three possible strategies:

- Select randomly; this approach could be good when starting small (see No. 3, above).
- Select after a thorough review of all case material and records.
- Select based on a shorter list of criteria that are readily available, such as when the statute of limitations expires (see No. 7, below).

Regardless of how the SAKs will be selected for testing, it is important to document the decision-making guidelines.

7 Using the statute of limitations as a selection criterion.

The statute of limitations (SOL) is the time period during which criminal charges can be filed. Because the SOL can vary depending on the nature of the crime, there could be multiple SOL "cutoff" dates for an individual kit. The number of cases that will need to be reviewed and the availability of resources may determine whether a jurisdiction employs more sensitive criteria for testing — for example, if [this] exists and [that] exists, the cutoff date for selecting kits to test will be [date] — or whether there is a single across-the-board cutoff date.

8 Budget sufficient time and resources for selecting SAKs.

As noted above, starting small can help develop estimates of how long it will take to identify SAKs for testing, based on the selection criteria. In the NIJ-sponsored project in Detroit, for example, selection of 1,600 SAKs for testing was based on three criteria: adjudication status, victim-offender relationship, and statute of limitations — and it took approximately 2,958 staff-hours to review records to determine testing eligibility. It is also crucial to budget for the time it will take to test the SAKs, review the testing results, and upload eligible profiles into CODIS.

9 Budget extra time for older kits.

Older SAKs may require extra time to prepare for testing and shipping due to peeling labels, missing labels, and re-sealing or re-packaging. Extra time may also be needed for forensic science staff to review older kits and address any issues that must be resolved before the laboratory can accept them for testing. (See another brochure in this series, *Performing an Audit of Sexual Assault Evidence in Police Custody*, for more information.)

10 Track and share testing results.

It is helpful to track the testing results and share those results with the full multidisciplinary team. Although certain case-specific results may not be appropriate to share widely, aggregate data may be useful to the team for tracking CODIS hits and the nature of those hits, such as case-to-case serial offenders.

11 What happens after testing?

Develop a plan for what happens after testing; again, starting small could help develop a solid plan. Here are some key issues to consider:

- Who should be informed of testing results?
- How will post-testing investigations be performed?
- How will case-to-case CODIS hits be handled?
- How will current casework be handled as older cases are reopened?
- How can the process be made flexible enough to respond to time-sensitive issues?

12 Expect the unexpected when testing results start coming in.

Given the limited empirical research on the issue of a large number of previously untested SAKs, it may be difficult to know whether testing results are typical or atypical. Consider reaching out to other jurisdictions that have tackled the issue to compare findings and strategize solutions.

13 Re-examine local policies and state statutes regarding evidence retention.

Although reviewing existing SAK-testing procedures may be controversial, it is possible that jurisdictions may want to make immediate changes to their testing policies. It is important to revisit testing policies regularly as new information and insights develop during the process. Pay special attention to selection criteria, as these may turn out to be not as clear-cut or as easy to enforce as originally envisioned.

14 Consider whether legislative changes are necessary.

The process of testing a large number of previously untested SAKs may suggest legislative changes, including, for example, requirements for mandatory SAK testing, timelines for submission to the lab and testing, and tracking mechanisms.

Other Brochures in This Series

Notifying Sexual Assault Victims After Testing Evidence

Forming an Action-Research Team to Address Sexual Assault Cases

Performing an Audit of Sexual Assault Evidence in Police Custody

For More Information

See an interactive Web page on using evidence in sexual assault kits:

<http://NIJ.gov/unsubmitted-kits/pages/default.aspx>

Learn more about the Detroit project: <https://www.NCJRS.gov> (keyword: 248680)

Learn more about the Houston project: <http://www.HoustonSAKResearch.org>

Learn more about the issue of untested evidence in sexual assault cases:

<http://www.NIJ.gov> (keyword: untested evidence in sexual assault cases)

Learn more about sexual assault investigations, including understanding the neurobiology of sexual assault and a partnership formed by NIJ and the FBI to help address the issue of unsubmitted evidence in sexual assault cases.

Visit [NIJ.gov](https://www.nij.gov), keyword: sexual assault investigations

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Acknowledgments

One of the National Institute of Justice's requirements in the Detroit and Houston projects was that multidisciplinary teams had to be involved in every step along the way. We thank the team members for their extraordinary commitment to these projects and for their role in improving the administration of justice in the United States.

The Detroit team:

- Michigan State University*
- Wayne County Prosecutor's Office
- Detroit Police Department
- WC Safe
- YWCA Interim House
- Michigan State Police
- Michigan Domestic Violence Prevention and Treatment Board
- Joyful Heart Foundation
- Michigan Prosecuting Attorneys Association

The Houston team:

- Sam Houston State University
- The University of Texas at Austin
- Houston Forensic Science Center
- Houston Police Department
- Houston Area Women's Center
- Memorial Hermann Health System
- Harris Health System
- Harris County District Attorney's Office

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SEXUAL ASSAULT KITS

Using Science to Find Solutions



Explore how evidence in SAKs is used in solving sexual assault cases, including:

- Implications for victims.
- Why many kits historically were not tested.
- What policymakers and criminal justice professionals should know.



Visit www.nij.gov/unsubmitted-kits to learn more.

