The National Center for Victims of Crime is pleased to provide the slides used in our April 25, 2014 Webinar, “Into the Lab: Mandatory Testing of Sexual Assault Kits.”

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Into the Lab: Mandatory Testing of Sexual Assault Kits

Cara Smith, JD
Torie Camp, M.Ed.
Our Mission

To forge a national commitment to help victims of crime rebuild their lives.
Advocacy to secure resources, rights, and protections for victims.

Training and technical assistance.
Project goal:
- to ensure that communities have the tools to create a victim-sensitive approach to sexual assault kit backlog reduction.
OVW SAK Backlog TTA Project Overview

- Victim Roundtable and Interviews
  - Report available online
- Online Resource Library
  - Policies and protocols on notification
  - State and Federal laws, pending legislation
  - Reports and resources
- Provide Technical Assistance
- Webinar Series
Upcoming Webinar
June 10, 1:00 PM (EST)
Untested Rape Kits: the Issue, the Impact and the Response
Natasha Alexenko, founder of Natasha’s Justice Project
VictimsOfCrime.org/DNA
Thank you!

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INTO THE LAB: MANDATORY TESTING OF SEXUAL ASSAULT KITS

Cara Smith, JD
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Presentation for the National Center for Victims of Crime

April 25, 2014
Illinois Law
Origins of Illinois Law

• Chicago Tribune article, June 14, 2009
  • Reported finding piles of untested rape kits in police department basements

  • http://www.hrw.org/reports/2010/07/07/i-used-think-law-would-protect-me-0
  • Suggested that 80 percent of rape kits in Illinois were never examined
What does the Illinois law require?

1) Requires law enforcement to submit sexual assault evidence kits for analysis within 10 days of receiving the evidence.

2) Requires law enforcement to submit an inventory to Illinois State Police (ISP) of all sexual assault evidence kits that have not been submitted for analysis.

3) Requires analysis of all SAK evidence within 6 months after receipt by the State Police Laboratory or other designated laboratory.

Timeline

• **October 15, 2010**, every law enforcement agency must provide Illinois State Police with an inventory of their previously unsubmitted sexual assault evidence.

• **February 15, 2011**, Illinois State Police will submit to the Governor, Attorney General and General Assembly a plan for analyzing the inventory evidence, including a timeline for completion of the analysis and a summary of the inventory received as well as requests for funding.

• **March 1, 2011**, all inventory evidence must be submitted to Illinois State Police or a lab approved by the Director.
Testing SAKs Going Forward

• Law enforcement must submit SAK evidence to the Illinois State Police lab or other lab approved by the Director of State Police within 10 days of receiving it.

• Law enforcement that receive SAK evidence within 30 days prior to the effective date of this Act (Sept 1, 2010) shall also be submitted.

• State lab must conduct analysis within 6 months of receipt of evidence.
Other Key Pieces of Illinois Statute

- Failure by a law enforcement department or crime lab to adhere to these deadlines does not mean the evidence cannot be tested.

- Testing of SAKs is only required if ‘sufficient staffing and resources are available.’

- Each SAK submitted for analysis shall have the following statement: ‘This evidence is being submitted by (name of investigating law enforcement agency) in connection with a prior or current criminal investigation).

- Allows for expungement of a DNA record if the DNA record was not connected to a criminal investigation.
Funding

Grant

- $3.3 million in grant funding was secured to pay for the cost of outsourcing testing

State Resources

- The seven Illinois State Police labs took on some of the work themselves. $400,000 was requested from the state to fund 5 additional forensic scientists.
Implementation

Audit

• Feb 2011.
  • Illinois crime lab had identified 4,000 unexamined sexual assault kits and planned to test them all by 2015.
  • More than 100 law enforcement agencies had yet to provide inventory. AG Madigan sent each a letter
Implementation

Testing the backlog

• Dec 2013. Chicago Tribune reported that the Illinois State Police has completed testing and analysis of the 4,000 kits that were part of the rape kit backlog
• 927 were matched in CODIS

Testing going forward

• 50% increase in the number of kits submitted for testing.
Lessons Learned

• The need for systemic checks and balances

• Definition of the requisite “criminal investigation”

• The significance and handling of hits to previously unsubmitted evidence
What’s next?

Tolling the Statute of Limitations Bill

• Bill would toll the SOL when rape kits sit untested
Texas Law
Origins of Texas Law

- *Rape in America: Justice Denied.* CBS, November 2009
- 19,000 untested sexual assault kits (SAKs) in Texas
  - 10,000 in Dallas
  - 5,100 in San Antonio
  - 3,800 in Houston

- Ft. Worth experience (bill author Sen. Davis’s district)
  - 2004 grant allowed for testing of all kits in Ft. Worth
  - 207 CODIS hits, 5 serial rapists found
Purpose of Texas Law

• To ensure evidence is processed in a timely manner
• To help law enforcement identify offenders
• To ensure prosecutors have evidence to prosecute cases
• To ensure victims know that everything is being done to catch the person who assaulted them

Text of bill:
• [http://www.capitol.state.tx.us/tlodocs/82R/billtext/pdf/SB01636F.pdf#navpanes=0](http://www.capitol.state.tx.us/tlodocs/82R/billtext/pdf/SB01636F.pdf#navpanes=0)
What does the Texas law require?

- Requires:

  1) Audit of all untested SAKs

  2) Mandates testing of any untested SAKs collected after Sept 1, 1996

  3) Mandates testing of all SAKs going forward

Law effective Sept 1, 2011
What Sexual Assault Kits (SAKs) does the law cover?

• Only applies to sexual assault evidence collected on or after Sept 1, 1996.

AND

• Only applies to SAKs associated with an Active Criminal Case. 
  **Active Criminal Case:** a case in which a sexual assault has been reported to a law enforcement agency, and physical evidence of the assault has been submitted to the agency or an accredited crime laboratory for analysis and for which the SOL has not run out.
Audit

- **October 15, 2011** – law enforcement must submit to the Texas Department of Public Safety (DPS) a list of their agency’s active criminal cases for which sexual assault evidence has not yet been submitted for laboratory analysis.

- **April 1, 2012** – law enforcement must send DPS, if space allows, or other public lab the sexual assault evidence listed in the Oct 15th deadline. If sent to another public lab, let DPS know what lab, what analysis was conducted and when the analysis happened.
Additional Deadlines

• **Feb 15, 2013** – DPS must submit a report to the Texas Governor and appropriate legislative committees:
  • A timeline for analyzing all the kits they have been made aware of and/or sent.
  • A request for funding to accomplish the analysis.
  • If DPS thinks outsourcing is necessary, a list of laboratories DPS thinks are capable of completing the analysis as well as what evidence will be sent to them.

• **Sept 1, 2014** - If funding is available, complete the analysis (or contract out analysis) of all sexual assault evidence submitted. *We’re not going to make it.*
Testing SAKs Going Forward

- Law enforcement must submit evidence to a crime lab within 30 days of receiving it.

- Initial legislation proposed 10 day turn around, but law enforcement didn’t think this was enough time and the number of days was changed to 30 before the bill became law.
Other Key Pieces of Texas Statute

- Failure by a law enforcement department or crime lab to adhere to these deadlines does not mean the evidence cannot be tested.

- **Testing of SAKs is only required if resources (money) are available.**

- Authorized state crime lab to contract with private crime labs.
Key Messages at Hearing

• Why do we need to test kits when we know who the perpetrator is?

• Answer from Ft. Worth Police Department witness:
  • The City of Ft. Worth decided to test all the kits. Because even if the kit wasn’t needed in THAT particular case, they the kit could be helpful in ANOTHER case. Through testing all kits they were able to identify serial rapists. “Because we process every kit is why we are having so much luck.”
Missing From Texas Law

• No penalty for not participating in audit.
  • However, an unintentional penalty has developed: not participating in audit effectively excludes agency from having their untested SAKs tested, i.e. DPS won’t know to contact law enforcement department and give you instructions for submitting untested kits.

• No requirement for law enforcement to report back to state if the new evidence proved critical in an investigation.
Opposition?

- San Antonio PD, testified against the bill
  - Opposed because requiring testing all kits going forward is an unfunded mandate. San Antonio PD policy is to only test kits if the suspect is unknown or if there is a child involved. If it’s a known suspect with an adult victim, they do not test the SAK.
- Sen. Whitmire’s response, “I can’t imagine what it is like to participate and submit the kit and everything that is involved, and then to find out you did it for nothing. How do you explain that to them? What is your explanation when someone calls and asks what the result is of their kit? What would you tell my daughter?”
Implementation

Audit

• Very low reporting. Suggest having a penalty for not reporting.
• Although reporting was low, it was enough to get funding.

Budget Request for Following Session

• $10.8 million appropriated the next session
Timeline for Testing

• DPS received funds Sept 1, 2013

• DPS put together testing specifics and requested proposals be submitted from private labs.

• Anticipated that by May 2014 DPS will select two private lab to outsource testing. DPS is also working on an MOU with University of North Texas to test some of the kits.
Anticipated Testing Process

- DPS will first contact small agencies who reported to DPS that they had untested SAKs. NOTE: If agency has not reported that they have kits to test, DPS will not contact the agency to initiate testing.
- Law enforcement will send kits directly to private labs that DPS has contracted with. Expect a 90-day turn-around time for analysis once crime lab has received evidence.
- Private lab will conduct analysis and send data to DPS to review
- After review, a report will be sent to the submitting law enforcement department.
- Law enforcement departments will make the determination to re-open the case or not
- Estimated cost for testing: $1000-1200/case
What’s next?

• Evaluation?
  • Is the testing of old SAKs resulting in completed investigations and prosecutions?
  • Is the testing of all SAKs going forward resulting in an increase in sexual assault investigations and prosecutions?
  • Is the testing of previously untested kits and all kits going forward having a positive impact for victims?

• Additional funding?
  • Will $10.8 million be enough to test all untested SAKs in Texas?
  • Will law enforcement departments need funding for more investigators?
  • Will prosecutors’ offices need more funding to prosecute cases?
  • Will more advocates be required to support these victims?
Thank you!
Please fill out our evaluation!

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